

OFFICIAL REPORT OF PROCEEDINGS  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 3

In the Matter of:

|                        |                            |
|------------------------|----------------------------|
| Starbucks Corporation, | Case Nos. 03-CA-285671,    |
|                        | 03-CA-290555, 03-CA-291157 |
| Employer,              | 03-CA-291196, 03-CA-291197 |
|                        | 03-CA-291199, 03-CA-291202 |
| and                    | 03-CA-291377, 03-CA-291378 |
|                        | 03-CA-291379, 03-CA-291381 |
| Workers United,        | 03-CA-291386, 03-CA-291395 |
|                        | 03-CA-291399, 03-CA-291408 |
| Charging Party.        | 03-CA-291412, 03-CA-291416 |
|                        | 03-CA-291418, 03-CA-291423 |
|                        | 03-CA-291431, 03-CA-291434 |
|                        | 03-CA-291725, 03-CA-292284 |
|                        | 03-CA-293362, 03-CA-293469 |
|                        | 03-CA-293489, 03-CA-293528 |
|                        | 03-CA-294336, 03-CA-293546 |
|                        | 03-CA-294341, 03-CA-294303 |
|                        | 03-CA-206200               |

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Place: Buffalo, New York

Dates: July 13, 2022

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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

STARBUCKS CORPORATION,

Employer,

and

WORKERS UNITED,

Charging Party.

Case Nos. 03-CA-285671,

03-CA-290555, 03-CA-291157

03-CA-291196, 03-CA-291197

03-CA-291199, 03-CA-291202

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03-CA-293489, 03-CA-293528

03-CA-294336, 03-CA-293546

03-CA-294341, 03-CA-294303

03-CA-206200

The above-entitled matter came on for hearing, pursuant to notice, before **MICHAEL A. ROSAS**, Administrative Law Judge, at the National Labor Relations Board, Region 3, Robert H. Jackson United States Courthouse, Wyoming (5E) Courtroom, 2 Niagara Square, Buffalo, New York 14202, on **Wednesday, July 13, 2022, 9:03 a.m.**

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# I N D E X

| <u>WITNESS</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> | <u>VOIR DIRE</u> |
|----------------|---------------|--------------|-----------------|----------------|------------------|
| Michelle Eisen | 258,276 342   |              | 401             |                |                  |
|                | 298,314       |              |                 |                |                  |
|                | 298,317       |              |                 |                |                  |
|                | 324           |              |                 |                |                  |

E X H I B I T SEXHIBITIDENTIFIEDIN EVIDENCE**General Counsel:**

|           |     |              |
|-----------|-----|--------------|
| GC-29 (a) | 259 | 276          |
| GC-29 (b) | 259 | Not Admitted |
| GC-32     | 292 | 293          |
| GC-33     | 297 | 298          |
| GC-34 (a) | 317 | 322          |
| GC-34 (b) | 317 | Not Admitted |
| GC-42     | 253 | 254          |

1                                    P R O C E E D I N G S

2                    JUDGE ROSAS: All right, this is the continuation in the  
3 matter of Starbucks Corporation. Counsel?

4                    MS. CACACCIO: I'm sorry, I said on the record but I might  
5 be able to -- could we go off the record for one second?

6                    JUDGE ROSAS: Okay, off the record.

7 (Off the record at 9:03 a.m.)

8                    JUDGE ROSAS: On the record.

9 General Counsel?

10                   MS. CACACCIO: Good morning, Judge. Just for the record,  
11 yesterday evening counsel for the General Counsel filed its  
12 petition to revoke the subpoena duces tecum that was filed  
13 against myself. And I'm wondering if we couldn't get a -- a  
14 briefing scheduled or something so that we can get a ruling on  
15 that?

16                   JUDGE ROSAS: When does the Respondent plan to file an  
17 opposition? I assume today?

18                   MR. BALSAM: Your Honor, to be quite honest with you, I  
19 haven't even looked at it. There was a number of things that  
20 we needed to do and it came in late yesterday, so we have not  
21 had a chance to look at it. To be quite honest, also, the  
22 counsel for the General Counsel --

23                   JUDGE ROSAS: Off the record.

24 (Off the record at 9:11 a.m.)

25                   JUDGE ROSAS: Go ahead. Back on the record.

1 MR. BALSAM: Your Honor, while we were off the record, I  
2 took a chance to look at what we set to achieve last night at  
3 9:08 p.m. I will note that, for the record, that when  
4 Respondents did in fact file their petition to revoke, the  
5 counsel for the General Counsel had at minimum two weeks to  
6 respond. Given the trial schedule in this case, I would  
7 request that we do have at least until next week, especially  
8 given the break, to respond to the current petition to revoke.

9 MS. CACACCIO: Your Honor, may I be heard briefly? The  
10 petition to revoke that we responded to was 182 pages, this  
11 one's 15. So to the extent that we had more time, it had to do  
12 with length rather than anything else. This is just a simple  
13 petition to revoke a subpoena that was improperly served on the  
14 General Counsel.

15 JUDGE ROSAS: Well, this is relative to the General  
16 Counsel's files, right?

17 MS. CACACCIO: Yes, Your Honor.

18 JUDGE ROSAS: And information supplied to the General  
19 Counsel by the Union or Union sources; is that correct?

20 MR. BALSAM: In part, yes.

21 JUDGE ROSAS: Okay. Well, it's everything that's in the  
22 Union -- in the General Counsel's file, right? All right. So  
23 we're waiting on your opposition and with respect to your  
24 opposition, whenever it comes, you want to have to deal with  
25 the issue of Board Rule 102.118A, okay?

1           Obviously, with respect to matters that are not strictly  
2   Jencks material, or otherwise privileged that are in the  
3   General Counsel's file, I strongly suggest that, you know, the  
4   Parties have a discussion regarding the General Counsel's  
5   approval for the release thereof. Now, obviously to the extent  
6   that those materials are in the possession or emanated from  
7   someone else -- and obviously you're gonna be subpoenaing it  
8   from both sources as well. But to the extent that any of it is  
9   to corroborate, verify, whatever -- you know, obviously, you do  
10   what you have to do. But obviously, you'll address all of this  
11   in the opposition but I'm just letting you know what my stream  
12   of subconscious thought tells me. Okay?

13           MR. BALSAM: Thank you, Your Honor.

14           JUDGE ROSAS: All right. Is there any other concern on  
15   your part right now? Essentially, I have no answer for you.

16           MS. CACACCIO: Understood, Your Honor. Yes, I do have one  
17   other thing before we get started. I know that Respondent's  
18   counsel -- which is why I took that brief break this morning --  
19   Respondent's counsel is going to be offering a set of exhibits,  
20   which includes petitions to revoke, oppositions to those, et  
21   cetera. Not included therein is the subpoena -- the ad  
22   testificandum subpoena to Howard Schultz or custodian of  
23   records, to which there was no petition to revoke. And so I'm  
24   asking that to be admitted now as General Counsel's Exhibit 42.

25           JUDGE ROSAS: So the Respondent has seen this?



1 MS. CACACCIO: It was served on them, Judge, but I'll --  
2 I'll give it to them now.

3 MS. POLITO: We have seen it, Your Honor.

4 JUDGE ROSAS: Okay, any objection?

5 MS. POLITO: No objection, Judge.

6 JUDGE ROSAS: General Counsel's 42? And that is just the  
7 subpoena served on who?

8 MS. CACACCIO: Mr. Howard Schultz, or custodian of  
9 records, which was returnable on Monday.

10 JUDGE ROSAS: Okay. General Counsel's 42 is received.

11 **(General Counsel Exhibit Number 42 Received into Evidence)**

12 MS. POLITO: Judge, I would just like to note for the  
13 record that since there has been no agreement with respect to  
14 discovery in documents, no one was available on Monday because  
15 there's been no agreement. So --

16 MS. CACACCIO: If I may be heard --

17 MS. POLITO: -- I would just like to note that for the  
18 record.

19 MS. CACACCIO: If I may be heard on that?

20 JUDGE ROSAS: Again, wait until we all finish.

21 MS. CACACCIO: I thought she was done.

22 JUDGE ROSAS: Okay.

23 MS. CACACCIO: Sorry, Judge. That isn't the only reason a  
24 custodian is called. A custodian can be called to determine  
25 what search efforts have even been made, which was the attempt

1 but no one appeared. So obviously, that -- that doesn't --  
2 that doesn't absolve them of producing the custodian.

3 JUDGE ROSAS: Anything else?

4 MS. CACACCIO: Not before we start, Judge.

5 MR. HAYES: Judge, I have something very quickly.

6 JUDGE ROSAS: Okay.

7 MR. HAYES: For the Charging Party, I want to just  
8 basically echo what the General Counsel said yesterday morning  
9 before we started testimony. The Union served a subpoena on  
10 the company on -- I think it was dated June 23rd but we agreed  
11 it would be counted as served June 24th. Your Honor ruled on  
12 the substance or the merits of that twice and upheld the  
13 subpoena except for, I believe, one request. It's mostly or  
14 virtually all the same request that the General Counsel has  
15 made and just as with the General Counsel, we haven't received  
16 anything as of today.

17 So yesterday morning, Your Honor said that the information  
18 needs to start flowing and our position is that needs to start  
19 flowing to the Union as well. That was me.

20 JUDGE ROSAS: Okay.

21 MS. POLITO: Judge, we would like to note for the record  
22 again that we filed several petitions to revoke Your Honor was  
23 ruling on those throughout the course of the weekend before  
24 this Administrative Hearing was scheduled to begin on Monday.  
25 When we appeared on Monday, we noted for the record that the

1 issues were still outstanding and we ask for the appointment of  
2 a special master. Forgive me, Judge, but I'm not sure if that  
3 decision came in late Monday night or first thing Tuesday  
4 morning, but there was a recent denial of the appointment of a  
5 special master. We are still considering whether or not we  
6 appeal that or -- the reasons for such, are more accurately set  
7 forth in our petition to revoke.

8       The extensive nature of this litigation, as both counsel  
9 for the General Counsel and counsel for Workers United,  
10 Indicated in the opening statements, this is one of the largest  
11 administrative hearings likely in the United States and as  
12 such, the requests are significantly broad. We have tried to  
13 narrow those requests, we have tried to engage in good-faith  
14 discussions, and we are still at the point where we are  
15 considering what we can do in response to the subpoenas and  
16 whether or not an appeal will be issued with the Board for the  
17 appointment of a special master.

18       MR. HAYES: Your Honor, if I may be heard briefly, I  
19 understand there's a little -- there's overlap between requests  
20 from the General Counsel and the Union, but I'm not aware of  
21 any discussions between -- or attempted discussions between the  
22 Company and the Union about document production.

23       JUDGE ROSAS: Well, you know, when things are simplified  
24 for me in terms of what's what and what has been provided to  
25 General Counsel, what -- what -- what has been made available

1 to you, obviously, you know, we'll -- we'll deal with that. We  
2 want to avoid duplication if at all possible here. We want to  
3 talk as much as possible regarding matters that are, as I  
4 indicated long ago in pre-hearing conferences, matters over  
5 which there are no dispute that the parties shouldn't have an  
6 issue with, that they should be talking about. Stuff that the  
7 Parties are aware of -- I mean, you know, it's nonsense to be  
8 belaboring a lot of this stuff, okay?

9 So when the time comes, we'll -- we'll deal with any  
10 issues that -- that remain, but right now we have Ms. Eisen,  
11 who is testifying and she still has a bit more to go. And to  
12 the extent that there is anything that is due to the Union or  
13 due to the General Counsel with respect to subpoenas, to the  
14 extent that testimony is completed, she is subject to recall in  
15 matters that are subsequently produced. Okay?

16 And that is the principle that will apply in the case of  
17 all witnesses for which subpoenaed documentation subsequently  
18 arrives that has not otherwise been dealt with. Okay? So  
19 as -- and I indicated that long ago in pre-hearing, okay?

20 You know, this -- this case keeps moving and at the same  
21 time, the parties are entitled to the material that they have  
22 subpoenaed, okay, that is appropriately due to them.

23 All right, anything else?

24 MS. CACACCIO: Just for the purpose of the record, to  
25 date, the General Counsel has received no documents still.

1 JUDGE ROSAS: Okay. Anything else? Okay. Are we ready?  
2 Ms. Eisen is still under oath.

3 Whereupon,

4 **MICHELLE EISEN**

5 having been previously sworn, was called as a witness herein  
6 and was examined and testified as follows:

7 MS. CACACCIO: Good morning, Ms. Eisen.

8 THE WITNESS: Good morning.

9 **RESUMED DIRECT EXAMINATION**

10 Q BY MS. CACACCIO: Between yesterday and today, did you  
11 speak to anyone about your testimony?

12 A I did not.

13 Q I know you did a little bit of bouncing around yesterday  
14 but I'm gonna go back to a meeting that you attended and  
15 recorded on October 20th. Okay?

16 A Mhmm.

17 Q And like before, what I'm going to do is I'm going to play  
18 the recording and I'll stop for anyone who has a question as to  
19 speaker.

20 (Audio played at 9:23 a.m., ending at 9:23 a.m.)

21 Q BY MS. CACACCIO: Do you know who that speaker is?

22 A Natalie Cioffi, C -- C-O-I-F-F-I (phonetic) or C-I-O-F-F-I,  
23 something like that.

24 Q Do you know who that person is?

25 A I actually do not know her, no. She's a member of

1 Starbucks Corporation.

2 JUDGE ROSAS: Counsel, what Exhibit is this audio?

3 MS. CACACCIO: The Exhibit -- apologies, Judge, the  
4 Exhibit is 29(a) and the transcription is 29(b).

5 MS. POLITO: And Judge, we had made standing objections, I  
6 just want to note those for the record since we're jumping  
7 right into them this morning.

8 JUDGE ROSAS: They're ongoing with respect -- they're  
9 continuing objections with respect to all of the audio  
10 recordings that will be offered by the General Counsel or the  
11 Charging Party. All right?

12 MS. POLITO: Thank you, Your Honor.

13 JUDGE ROSAS: Okay.

14 Q BY MS. CACACCIO: How do you know that she was a member of  
15 Starbucks Corporate?

16 A She does at some point introduce herself, I think, in  
17 that, and tells us that she's a member.

18 (Audio played at 9:24 a.m., ending at 9:25 a.m.)

19 Q BY MS. CACACCIO: Who speaks that -- that's moved about  
20 two years out?

21 A I think that's still Natalie.

22 (Audio played at 9:25 a.m., ending at 9:25 a.m.)

23 Q BY MS. CACACCIO: Who asked that question?

24 A Allyson Peck.

25 Q And who responded?

1 A I think that was me.

2 MS. CACACCIO: And we're about 18 seconds.

3 (Audio played at 9:25 a.m., ending at 9:25 a.m.)

4 Q BY MS. CACACCIO: Who asked how your shift was?

5 A That was also Allyson Peck.

6 (Audio played at 9:25 a.m., ending at 9:26 a.m.)

7 Q BY MS. CACACCIO: What were you talking about there?

8 A We had just reopened after the remodel.

9 MS. CACACCIO: We're at 50 seconds.

10 (Audio played at 9:26 a.m., ending at 9:26 a.m.)

11 Q BY MS. CACACCIO: Who talked about a transfer to Brandy's  
12 store together?

13 A That's Angela Dudzik.

14 (Audio played at 9:26 a.m., ending at 9:26 a.m.)

15 Q BY MS. CACACCIO: Who asked that?

16 A That's Natalie.

17 MS. CACACCIO: We're at 1:06.

18 (Audio played at 9:27 a.m., ending at 9:27 a.m.)

19 Q BY MS. CACACCIO: Who says that?

20 A Angela Dudzik.

21 (Audio played at 9:27 a.m., ending at 9:27 a.m.)

22 Q BY MS. CACACCIO: Who's that?

23 A Tatyana Gonzalez.

24 MS. CACACCIO: We're at 1:19.

25 (Audio played at 9:27 a.m., ending at 9:27 a.m.)

1 Q BY MS. CACACCIO: Who says that?

2 A Angela Dudzik.

3 MS. CACACCIO: We're at 1:32.

4 (Audio played at 9:28 a.m., ending at 9:28 a.m.)

5 Q BY MS. CACACCIO: Who was talking before you started  
6 talking?

7 A Tatyana Gonzalez.

8 MS. CACACCIO: We're at 1:49.

9 (Audio played at 9:28 a.m., ending at 9:29 a.m.)

10 Q BY MS. CACACCIO: Who's speaking right now?

11 A Allyson Peck.

12 MS. CACACCIO: We're at 2:30.

13 (Audio played at 9:29 a.m., ending at 9:29 a.m.)

14 Q BY MS. CACACCIO: Were you given a copy of the PowerPoint?

15 A We were not, no.

16 MS. CACACCIO: Your Honor, obviously this is something the  
17 General Counsel has subpoenaed, so without it received, we'd  
18 may have to to do something with it.

19 We're at 2:43.

20 (Audio played at 9:29 a.m., ending at 9:32 a.m.)

21 Q BY MS. CACACCIO: Who responded "no?"

22 A Allyson.

23 MS. CACACCIO: We're at 5:06.

24 (Audio played at 9:32 a.m., ending at 9:42 a.m.)

25 Q BY MS. CACACCIO: Do you know who she was talking to?



1 A She says Ana?

2 Q Yes.

3 A That Ana Gutie -- Gu -- Gutierrez.

4 Q And who is that?

5 A She was an -- a -- or an ops person.

6 Q And how do you know that?

7 A She had introduced herself I think prior to -- to me  
8 starting. And I heard that she'd been in and out of the  
9 stores.

10 MS. CACACCIO: We're at 15:08.

11 (Audio played at 9:42 a.m., ending at 9:44 a.m.)

12 Q BY MS. CACACCIO: Who is that?

13 A Allyson Peck.

14 MS. CACACCIO: We're at 16:48

15 (Audio played at 9:44 a.m., ending at 9:44 a.m.)

16 Q BY MS. CACACCIO: Do you know who that is?

17 A I think that's Tatiana Gonzalez. But I just need to hear  
18 it a little bit more.

19 (Audio played at 9:44 a.m., ending at 9:44 a.m.)

20 A It's her.

21 Q BY MS. CACACCIO: Do you know who that is?

22 A That's Tatiana Gonzalez.

23 MS. CACACCIO: We're at 17:14.

24 (Audio played at 9:45 a.m., ending at 9:55 a.m.)

25 Q BY MS. CACACCIO: Who is asking that?

1     A     Tatiana Gonzalez.

2           MS. CACACCIO:  We're at 28:05.

3     (Audio played at 9:55 a.m., ending at 9:57 a.m.)

4     Q     BY MS. CACACCIO:  Who asked that question?

5     A     Tatiana Gonzalez.

6     (Audio played at 9:57 a.m., ending at 10:00 a.m.)

7     Q     BY MS. CACACCIO:  Do you know what was?

8     A     That's Ana.

9           MS. CACACCIO:  We're at 32:17.

10    (Audio played at 10:00 a.m., ending at 10:02 a.m.)

11    Q     BY MS. CACACCIO:  Do you know who that is?

12    A     Allyson Peck.

13           MS. CACACCIO:  We're at 34:16.

14    (Audio played at 10:02 a.m., ending at 10:03 a.m.)

15    Q     BY MS. CACACCIO:  Who asked that question?

16    A     Can you take it back?

17    Q     Yep.

18    (Audio played at 10:03 a.m., ending at 10:04 a.m.)

19    A     I think that's Kat Ginsberg.

20    Q     BY MS. CACACCIO:  And who's that -- who's that?

21    A     That -- that's a barista at -- at Elmwood.

22           MS. CACACCIO:  We're at 35:43.

23    (Audio played at 10:04 a.m., ending at 10:04 a.m.)

24    Q     BY MS. CACACCIO:  Do you know who that speaker is?

25    A     LaRue Heutmaker.

1 MS. CACACCIO: We're at 35:58.

2 MS. POLITO: I'm sorry, can you just say the name one more  
3 time?

4 THE WITNESS: Sure, LaRue, L-A-R-U-E.

5 MS. POLITO: Thank you.

6 JUDGE ROSAS: Spell the last name of the person you  
7 identified.

8 THE WITNESS: I'm going to try. H-E-U-T-M-A-K-E-R.

9 MS. CACACCIO: We're at --

10 Q BY MS. CACACCIO: And who is LaRue? I think we did this  
11 yesterday.

12 A Yeah. LaRue's the -- she was a barista at Elmwood.

13 MS. CACACCIO: We're at 35:58.

14 (Audio played at 10:05 a.m., ending at 10:05 a.m.)

15 Q BY MS. CACACCIO: Do you know who responded to LaRue?

16 A Angela Dudzik.

17 (Audio played at 10:05 a.m., ending at 10:05 a.m.)

18 Q Do you know who that is talking right now?

19 A That's still LaRue.

20 MS. CACACCIO: We're at 36:33.

21 (Audio played at 10:06 a.m., ending at 10:06 a.m.)

22 Q BY MS. CACACCIO: Who said the financial statements are  
23 public?

24 A Natalie.

25 MS. CACACCIO: We're at 36:57. Sorry, hang on.

1 (Audio played at 10:06 a.m., ending at 10:07 a.m.)

2 Q BY MS. CACACCIO: Who's that?

3 A That's LaRue.

4 MS. CACACCIO: We're at 35 -- 37:35.

5 (Audio played at 10:07 a.m., ending at 10:09 a.m.)

6 Q BY MS. CACACCIO: Do you know who that was?

7 A The therapy comment?

8 Q Yep.

9 A That was LaRue.

10 MS. CACACCIO: We're at 39:35.

11 (Audio played at 10:09 a.m., ending at 10:09 a.m.)

12 Q BY MS. CACACCIO: Do you know who says that?

13 A Can you take it back?

14 Q Yep.

15 A I believe that's LaRue.

16 MS. CACACCIO: We're at 40:03.

17 (Audio played at 10:10 a.m., ending at 10:10 a.m.)

18 Q BY MS. CACACCIO: Do you know who that is?

19 A Kat Ginsberg.

20 MS. CACACCIO: We're at 40:10.

21 Q BY MS. CACACCIO: Do you know how to spell that?

22 A First name or last name?

23 Q Both.

24 A It's -- it's short for Katarina, but K-A-T, and Ginsberg,

25 G-I-N-S-B-E-R-G.

1 MS. CACACCIO: We're at 40:10.

2 (Audio played at 10:10 a.m., ending at 10:11 a.m.)

3 Q BY MS. CACACCIO: Do you recognize that voice?

4 A Angela Dudzik.

5 MS. CACACCIO: We're at 30:48.

6 (Audio played at 10:11 a.m., ending at 10:12 a.m.)

7 Q BY MS. CACACCIO: Do you know who responded to LaRue? I'm  
8 sorry, to Angela?

9 A Tatiana Gonzalez.

10 MS. CACACCIO: We're at 41:39.

11 (Audio played at 10:12 a.m., ending at 10:12 a.m.)

12 Q BY MS. CACACCIO: Do you know who is talking?

13 A LaRue.

14 MS. CACACCIO: We're at 42 minutes.

15 (Audio played at 10:13 a.m., ending at 10:13 a.m.)

16 Q BY MS. CACACCIO: Who's talking right now?

17 A That's still LaRue.

18 MS. CACACCIO: We're at 42:21.

19 (Audio played at 10:13 a.m., ending at 10:14 a.m.)

20 Q BY MS. CACACCIO: Do you know who that is?

21 A Angela Dudzik.

22 MS. CACACCIO: We're at 43:07.

23 (Audio played at 10:14 a.m., ending at 10:14 a.m.)

24 Q BY MS. CACACCIO: Do you know who's talking right now  
25 about the viral video?

1 A I believe it's LaRue.

2 MS. CACACCIO: We're at 43:55.

3 (Audio played at 10:15 a.m., ending at 10:16 a.m.)

4 Q BY MS. CACACCIO: Who's talking right now?

5 A Allyson Peck.

6 MS. CACACCIO: We're at 45:01.

7 (Audio played at 10:16 a.m., ending at 10:16 a.m.)

8 Q BY MS. CACACCIO: Who's talking right now?

9 A Angela Dudzik.

10 MS. CACACCIO: We're at 45:36.

11 (Audio played at 10:16 a.m., ending at 10:18 a.m.)

12 Q BY MS. CACACCIO: Who is talking right now?

13 A That's LaRue Heutmaker.

14 MS. CACACCIO: We're at 47:32.

15 (Audio played at 10:18 a.m., ending at 10:18 a.m.)

16 Q BY MS. CACACCIO: Who said February?

17 A Tatiana Gonzalez.

18 (Audio played at 10:19 a.m., ending at 10:19 a.m.)

19 Q BY MS. CACACCIO: Who said that?

20 A Ana.

21 Q That it's supposed to be installed the 28th?

22 A Yeah, I think she's saying that it's going to be a  
23 installed before February; that it's due in on the 28th of that  
24 month, which would have been October.

25 MS. CACACCIO: We're at 47:47.

1 (Audio played at 10:19 a.m., ending at 10:20 a.m.)

2 Q BY MS. CACACCIO: Who is talking right now?

3 A Kat Ginsberg.

4 MS. CACACCIO: We're at 48:16.

5 (Audio played at 10:20 a.m., ending at 10:21 a.m.)

6 MS. POLITO: There's a couple of people speaking in that  
7 last dialogue, and I'm just not sure --

8 MS. CACACCIO: I don't know that it's necessary.

9 JUDGE ROSAS: How much time is left in the video? In the  
10 audio?

11 MS. CACACCIO: We're at 48 -- we're at 48:59 and  
12 there's -- it's an hour and two-minute recording.

13 JUDGE ROSAS: So about 14 more minutes, right?

14 MS. CACACCIO: Yep.

15 JUDGE ROSAS: Okay. You good?

16 MS. POLITO: I just wanted to know who those last few  
17 speakers were. I think they we're LaRue and Kat, but I just --

18 THE WITNESS: I -- it's LaRue and Kat for certain.

19 There's probably someone else mixed in there, but it's LaRue  
20 talking over Kat.

21 MS. POLITO: Thank you.

22 (Audio played at 10:21 a.m., ending at 10:22 a.m.)

23 Q BY MS. CACACCIO: Who's right now?

24 A LaRue is talking currently. I interjected over her.

25 MS. CACACCIO: We're at 49:22.

1 (Audio played at 10:22 a.m., ending at 10:24 a.m.)

2 Q BY MS. CACACCIO: Do you know who said they don't feel  
3 human half the time?

4 A Angela Dudzik.

5 (Audio played at 10:24 a.m., ending at 10:24 a.m.)

6 Q BY MS. CACACCIO: Who asked when it happened?

7 A I think it was Ana, but if you could back it up, I can  
8 confirm that.

9 Q That's too far.

10 (Audio played at 10:24 a.m., ending at 10:25 a.m.)

11 A I can't tell if it's ana or Allyson.

12 MS. CACACCIO: We're at 51:22.

13 (Audio played at 10:25 a.m., ending at 10:25 a.m.)

14 Q BY MS. CACACCIO: Who asked which store, do you know?

15 A I think that was Angela Dudzik.

16 MS. CACACCIO: We're at 51:37.

17 THE WITNESS: I'm sorry, that was not Angela Dudzik.

18 Q BY MS. CACACCIO: Who was it?

19 A I think it was Natalia.

20 MS. CACACCIO: Okay. We're at 51:30 -- that was at 51:37.

21 (Audio played at 10:26 a.m., ending at 10:33 a.m.)

22 Q BY MS. CACACCIO: Do you know who is talking right now?

23 A Allyson Peck.

24 MS. CACACCIO: We're at 59:03.

25 (Audio played at 10:33 a.m., ending at 10:36 a.m.)



1 Q BY MS. CACACCIO: Who wanted a ride?

2 A Angela Dudzik.

3 (Audio played at 10:36 a.m., ending at 10:36 a.m.)

4 Q BY MS. CACACCIO: Who said they didn't want to take an  
5 Uber?

6 A I think that was also Angela Dudzik.

7 (Audio played at 10:36 a.m., ending at 10:36 a.m.)

8 Q BY MS. CACACCIO: Who also offered to give her a ride?

9 A I think that was LaRue.

10 Q Do you know what's talking there, what's happening there?

11 A Yes, I got a text message with a video attachment, and I  
12 opened it. And it overwrote the recording.

13 MS. CACACCIO: We're at 1:01:47.

14 A And I can't remember what it was.

15 Q BY MS. CACACCIO: And did that happen at that time?

16 A Yes. I had just looked at my phone when we came out of  
17 the meeting, and that was on there.

18 MS. CACACCIO: We're at 1:02:01.

19 (Audio played at 10:37 a.m., ending at 10:37 a.m.)

20 Q BY MS. CACACCIO: Who asked for the bathroom rest, do you  
21 know?

22 A If you can take it back, I might be able to figure that  
23 out.

24 (Audio played at 10:37 a.m., ending at 10:37 a.m.)

25 A I -- I think Kat is asking where the bathroom is.

1 (Audio played at 10:37 a.m., ending at 10:38 a.m.)

2 MS. CACACCIO: So that's the end of the recording, the end  
3 of the transcription.

4 Q BY MS. CACACCIO: Is that recording what --

5 MS. POLITO: Yeah, so I'm sorry, can you just identify  
6 that last speaker?

7 MS. CACACCIO: I don't -- Your Honor, I -- I don't think  
8 that's necessary. I mean, I'll do it because we've been doing  
9 it, but I'm going to start objecting to getting names and  
10 speakers for things that aren't relevant to the actual  
11 proceedings, because I think it's going to be wasting the  
12 Court's time when we have, you know, 40, 50 of these.

13 JUDGE ROSAS: So when we submit the transcriptions, we're  
14 going to leave out some of the names that are unidentified?

15 MS. CACACCIO: Correct. It'll just say unidentified  
16 speaker.

17 MS. POLITO: Judge, that is my understanding of what we  
18 discussed yesterday. But it also lends to my objection. Most  
19 of these speakers have been identified throughout the course of  
20 the proceeding, and the last person I just couldn't make out.  
21 So I'm just asking who that speaker was so I have some context  
22 of the overall proceeding that Counsel is trying to introduce  
23 into evidence.

24 MS. CACACCIO: If I might be heard --

25 MS. POLITO: I should know who the speakers are.



1 MS. CACACCIO: The last sentence was "My girlfriend is,  
2 like, my live-in baby, so I'm definitely going home." That's  
3 certainly not relevant. The speaker does not need to be  
4 identified for this recording to be admitted. It's not  
5 necessary and it's wasting a lot of the Court's time. So  
6 I -- I don't think that every speaker needs to be identified  
7 before a recording is admitted. That's certainly not -- not  
8 the rule or requirement. This witness has already testified  
9 that she attended the meeting. She recorded it in full. And  
10 every speaker need not be identified for a recording to be  
11 admitted.

12 JUDGE ROSAS: So we've taken time to identify speakers  
13 before now that were speaking before the meetings started. But  
14 you take issue with this particular segment?

15 MS. CACACCIO: I -- I'm willing to do it for this -- at  
16 this -- at this point for this particular recording because  
17 we've been doing it for the whole thing. But I'm going to  
18 start objecting to -- to this line because I think that  
19 it's -- it's wasting a lot of the Court's time.

20 JUDGE ROSAS: So let me just make sure. Is there anything  
21 sensitive about that because --

22 MS. CACACCIO: No.

23 JUDGE ROSAS: -- we -- we referenced the baby --

24 MS. CACACCIO: Correct.

25 JUDGE ROSAS: -- living -- okay.

1 MS. CACACCIO: No, no. There's nothing sensitive, Judge.  
2 I just -- I think --

3 JUDGE ROSAS: That's all I cared about.

4 MS. CACACCIO: No, Judge.

5 JUDGE ROSAS: So the objection -- the -- the -- the  
6 objection is noted and -- and I'm instructing the General  
7 Counsel to be consistent --

8 MS. CACACCIO: Yes, Judge.

9 JUDGE ROSAS: -- as far as any transcription that you want  
10 to offer --

11 MS. CACACCIO: Yes, Judge.

12 JUDGE ROSAS: -- it -- if it's going to be of assistance  
13 to the fact finder because it falls under the category of hey,  
14 you never know, you know. I think there was a lottery -- a New  
15 York lottery saying to that effect one time, you know, why you  
16 should always play it, right.

17 But we're talking about voice identification issues  
18 possibly. And look, you know, who spoke when and so on, that  
19 was such and such. You just never know, right?

20 MS. CACACCIO: Yes, Judge.

21 JUDGE ROSAS: So if we're going to do it for pre-meeting  
22 in some instances, we're going to do it for all, we're going to  
23 do it for post-meeting. It's going to be a transcription of  
24 whatever it is that you have the audio for that y'all are  
25 submitting the transcription for. Okay? All right. So that's

1     that.  Anything else?

2             MS. CACACCIO:  Judge, I'm still not clear on the -- on the  
3     ruling.  For you to accept the recordings into evidence, are  
4     you suggesting that every speaker needs to be identified?

5             JUDGE ROSAS:  Well, that's what you were establishing on  
6     the record --

7             MS. CACACCIO:  Only because --

8             JUDGE ROSAS:  Well, look --

9             MS. CACACCIO:  -- Respondent had objected to it and I -- I  
10    was just doing it.  But I'm -- I'm now objecting to that as a  
11    concept.

12            JUDGE ROSAS:  Well, let's -- let's do this.  Let -- let me  
13    partially reconsider this, Respondent.  If we're having the  
14    witness identify who the unidentified are on the record, do we  
15    need to do it in the recording?  I mean, do we need to do it  
16    the transcription?

17            MS. POLITO:  Yes, Your Honor, because the -- all day  
18    yesterday, there were discrepancies between what the witness  
19    testified to with respect to a particular voice and also what  
20    was in the transcript.  So the witness actually helped identify  
21    all day yesterday the voices that she recognized.  And as the  
22    Respondent, we have -- we're entitled to know the completeness  
23    of who was there, who all was present.  I don't know if this  
24    particular speaker is relevant or not.  I happen to not  
25    recognize the voice from all the voices that we went through.

1     So I asked a simple question for completeness, who was that  
2     voice. Suddenly now after a whole day of going through this,  
3     Gen -- Counsel for the General Counsel is going to object to  
4     identifying people?

5             JUDGE ROSAS: Okay.

6             MS. CACACCIO: I have a proposal.

7             JUDGE ROSAS: Last -- last -- last --

8             MS. CACACCIO: Yes, Your Honor.

9             JUDGE ROSAS: -- choice.

10            MS. CACACCIO: I have a proposal. Perhaps because we do  
11     have so many, Judge. I mean, we have -- we have so many of  
12     these recordings for so many hours. Perhaps prior to the  
13     witness testifying, they could review the transcript, listen to  
14     the recording, make edits. Then we wouldn't need to play it in  
15     court. If Respondent has cross-examination for it, so be it.  
16     Obviously, everyone would have to understand that the original  
17     transcriptions were not made by the witness. They would just  
18     be editing them for the purpose of completeness. And we  
19     wouldn't be having to play these over and over and over.

20            JUDGE ROSAS: As -- as far as I'm concerned, somebody  
21     could handwrite over something to facilitate that. But the  
22     answer is that my ruling stands. Compared to all of the work  
23     that is going to have to get done to clarify who unidentified  
24     speakers are through those many minutes of many meetings, the  
25     before and the after is relatively insignificant. So that's

1 the end of that discussion.

2 Okay. Next issue. Any -- any other questions at this  
3 time before we break?

4 MS. CACACCIO: Not before we break, Judge.

5 JUDGE ROSAS: Nothing relating to this particular exhibit?  
6 You offer --

7 MS. CACACCIO: I -- I would like --

8 JUDGE ROSAS: -- this exhibit?

9 MS. CACACCIO: -- to offer it. I would like to offer  
10 29(a). And then 29(b) will be an annotated transcript.

11 MS. POLITO: Same objection stands.

12 JUDGE ROSAS: Okay. 29(a) is received over objection.

13 **(General Counsel Exhibit Number 29(a) Received into Evidence)**

14 JUDGE ROSAS: 29(b) to be submitted and considered  
15 at -- at a future time. Okay. Now --

16 MS. CACACCIO: Your Honor, are you asking -- would you  
17 like to have the witness identify the very last speaker for  
18 this since --

19 JUDGE ROSAS: Oh, yes.

20 MS. CACACCIO: -- it will be consistent?

21 JUDGE ROSAS: Yes.

22 **RESUMED DIRECT EXAMINATION**

23 Q BY MS. CACACCIO: Michelle, I'm going to play the  
24 last -- the last bit for you.

25 (Audio played at 10:44 a.m., ending at 10:44 a.m.)

1 A That is Tatyana Gonzalez.

2 JUDGE ROSAS: Okay. So the tape is over. No other  
3 questions regarding this exhibit?

4 MS. CACACCIO: Not at this time.

5 JUDGE ROSAS: Okay, we're going to break. Take that -- a  
6 few minutes, five minutes or so. Let me ask you. So you have  
7 one more audio with this witness?

8 MS. CACACCIO: Yes, Judge.

9 JUDGE ROSAS: And how long is it?

10 MS. CACACCIO: It won't be immediate. It's not the  
11 immediate next thing that's happening, Judge.

12 JUDGE ROSAS: So you're going to have some questions?

13 MS. CACACCIO: Yes, Judge.

14 JUDGE ROSAS: And then --

15 MS. CACACCIO: That's what you asked me to do --

16 JUDGE ROSAS: And then --

17 MS. CACACCIO: -- so we will do that.

18 JUDGE ROSAS: And then -- and then how long will it take  
19 you?

20 MS. CACACCIO: 33 minutes and 16 seconds.

21 JUDGE ROSAS: Okay. And when we complete the playing of  
22 that tape, do you have additional questioning on this witness'  
23 direct examination?

24 MS. CACACCIO: So I broke it up such that we wouldn't be  
25 doing recordings back to back, considering I was trying to be



1 respectful for -- for --

2 JUDGE ROSAS: I'm just trying to get a sense.

3 MS. CACACCIO: So when we play the last recording, I'll  
4 probably need a brief break just to consult. And then -- and  
5 then we'd be --

6 JUDGE ROSAS: Okay. And then -- then we would probably be  
7 close to taking a break for lunch. And at that point, you're  
8 going to be prepared for cross-examination of this witness.  
9 And the question is how much Jencks material do you have for  
10 this witness?

11 MR. HAYES: Your Honor, I should point out I -- over here.  
12 I do have --

13 JUDGE ROSAS: You know, let me just tell you. Yeah. I  
14 mean, it's -- maybe you male individuals that will -- are  
15 tending to sound alike sometimes. Raise your hand when you  
16 talk.

17 MR. HAYES: I -- I will raise my hand.

18 JUDGE ROSAS: I was -- I was looking at you guys, thinking  
19 the voice was coming over here before I realized that it was  
20 the Union complaining about their subpoena. And you know,  
21 it -- I was distracted for a little bit not seeing any movement  
22 on your part. And not that you were really moving either.

23 MR. HAYES: Yeah. I'm not very animated.

24 JUDGE ROSAS: And that's really -- the mask really does a  
25 job. But anyway, go ahead.

1           MR. HAYES: So Your Honor, I just want to point out, I  
2 will have some brief direct exam of the witness as well for the  
3 Charging Party.

4           JUDGE ROSAS: Yes, okay. Sorry, I --

5           MR. HAYES: That's okay.

6           JUDGE ROSAS: -- neglected you.

7           MR. HAYES: It -- it won't be --

8           JUDGE ROSAS: My practice is for the Charging Party to  
9 then ask their questioning. Will that be long?

10          MR. HAYES: No, it won't. Not at all.

11          JUDGE ROSAS: Okay. Okay. So I'd like to ideally break  
12 so we can figure out a lunch break as well as a cross-  
13 examination preparation break. Okay.

14          MS. POLITO: Judge, are we off the record?

15          JUDGE ROSAS: Hold on. Let me get an idea of how many  
16 pages. Because my -- my rule of thumb is generally a minute a  
17 page.

18          MS. CACACCIO: So Judge, we do have to talk a little bit  
19 about this. We'll actually have some time before we do it.  
20 There is -- so there are -- Michelle has produced a number of  
21 affidavits. One of them, we believe, is not appropriate Jencks  
22 material because it's an affidavit for a case that isn't before  
23 the Court at this time. But it -- I need to figure out what  
24 the status of the investigation is even at this point.

25          JUDGE ROSAS: I'll have to look at it.

1 MS. CACACCIO: I know that it's not in this case. It's  
2 regarding a bargaining allegation that isn't -- that isn't at  
3 issue in this case.

4 JUDGE ROSAS: I still have to look at it.

5 MS. CACACCIO: I understand.

6 JUDGE ROSAS: I still have to look at it to see if it  
7 references any of the facts of this case.

8 MS. CACACCIO: So absent that --

9 JUDGE ROSAS: Let me look at it now, as a matter of fact.

10 MS. CACACCIO: Okay.

11 JUDGE ROSAS: And anything else that's -- that you claim  
12 is going to fall under that.

13 MS. CACACCIO: Right. So it's just this one affidavit.  
14 Which obviously, we would object that they are not entitled to  
15 it as it's not -- whatever. We can talk about that later.  
16 This one's very brief. It's three pages. This one's longer,  
17 at 20 pages. This one is shorter, at three pages. So I'm  
18 trying to -- yeah. This one.

19 JUDGE ROSAS: Is that it?

20 MS. CACACCIO: Yep. Let me double-check. If I can have a  
21 second for that. Yes, Judge. That's it.

22 JUDGE ROSAS: Okay. So it's looking like right now, we'd  
23 probably be taking an hour and a half break.

24 MS. POLITO: Judge, if I may. We're off the record,  
25 right? Respondent's intention is to resort --

1 JUDGE ROSAS: We're not off --

2 MS. CACACCIO: Oh, I actually have --

3 JUDGE ROSAS: Okay. Let's -- let's go off the record.

4 (Off the record at 10:50 a.m.)

5 JUDGE ROSAS: All right. Go ahead, Respondent.

6 MS. POLITO: I don't believe I have to make a motion,  
7 Judge. I was just being courteous --

8 JUDGE ROSAS: Go ahead.

9 MS. POLITO: -- to the Court that --

10 JUDGE ROSAS: Go ahead.

11 MS. POLITO: -- we were having a conversation on the  
12 record about timing. And we were informing the Court that  
13 Respondent intends on reserving its cross-examination of the  
14 Board's witnesses until our case-in-chief. And we will be  
15 serving the witnesses with a subpoena duces tecum as well as a  
16 testifying subpoena for the witness to be recalled during our  
17 case-in-chief, which we have every right and entitlement to do  
18 so. There's no rule requiring us to engage in cross-  
19 examination at this time.

20 MS. CACACCIO: Your Honor, this witness shouldn't be  
21 recalled by Respondent for cross-examination. If they want to  
22 recall her for some kind of direct examination, so be it. But  
23 she definitely can't be recalled for cross. What this is is an  
24 attempt to circumvent the subpoena that we issued, Your Honor,  
25 because we don't have any documents for her yet. She's been

1 required to testify with no documents, with nothing that has  
2 been produced by Respondent. So what they're going to do,  
3 based on what they've just said, is they're going to wait or  
4 they're going to try to wait, recall her, then present all  
5 kinds of records and documents that we will not have been able  
6 to see because they haven't been produced. They should be  
7 required to cross-examine her now. It's not appropriate to  
8 wait to cross-examine her for four months from now when their  
9 case-in-chief may begin.

10 MR. HAYES: Your Honor, the Charging Party will oppose any  
11 motion along the same lines for this witness or any other.

12 MS. CACACCIO: The recall of these witnesses -- my  
13 understanding, the recall of these witnesses for the -- for the  
14 purpose of documentation only. Not for them to withhold their  
15 cross-examination of them.

16 MS. POLITO: Judge, if I may. Just to be clear, the  
17 Respondent is not making a motion. Respondent is not required  
18 to make a motion. Respondent has every right to reserve cross-  
19 examination and recall the witness, pursuant to a subpoena  
20 duces tecum and testify subpoena at a later date in our case-  
21 in-chief. And as a courtesy, we were informing the Court and  
22 counsel about our intention because we happened to be  
23 discussing breaks and what that might look like. So as -- as a  
24 courtesy, we were sharing that with the Court now. But there  
25 is no requirement in the rules that we need cross-examination.

1           Moreover, Your Honor, as everyone is well aware, we are  
2 continuing to work on the voluminous request of discovery. We  
3 have indicated that to counsel. We just got rulings from Your  
4 Honor -- again, I apologize -- either Monday night or Tuesday  
5 morning. We fully expected a special master to be appointed.  
6 That hasn't happened. We're going to start to try to roll out  
7 documents.

8           Your Honor has indicated multiple times that the witness  
9 will be subject to recall in the event such documents were  
10 relevant to this particular witness by both the Board and both  
11 by the Union's counsel. As such, it only makes most judicial  
12 sense for us to reserve our cross until such later time as  
13 it -- it A, either the witness needs to be recalled by Counsel  
14 for the General Counsel or the Board's -- Board's Counsel  
15 or -- I mean, the Union's Counsel, or at such time when we are  
16 calling the witness in our case-in-chief, which we fully intend  
17 to do and have every right to do so.

18           JUDGE ROSAS: All right. I'm going to reserve on that  
19 issue. Let's just call it an issue right now. The General  
20 Counsel still has a little bit more to go. And the Charging  
21 Party will have some examination as well. So let me mull that  
22 all over.

23           MS. CACACCIO: Your Honor, to the extent that this is  
24 granted, I'm going to have to talk to my office about possibly  
25 filing a special appeal. Moreover, we certainly won't be

1 turning over Jencks material if they're not beginning to cross-  
2 examine this witness.

3 JUDGE ROSAS: Well, no. There would be no Jencks material  
4 if there's no cross-examination. You are correct. All right.  
5 Like I said --

6 MS. CACACCIO: And Judge, forever. I mean, if they're not  
7 cross examining her and they're calling her on their case-in-  
8 chief --

9 JUDGE ROSAS: Correct, correct.

10 MS. CACACCIO: -- then you get --

11 JUDGE ROSAS: So there --

12 MS. CACACCIO: -- no Jencks material.

13 JUDGE ROSAS: -- wouldn't be any Jencks at that time,  
14 yeah.

15 MS. POLITO: Judge, just for the record, there was a ten-  
16 day proceeding filed by the Board in which there are publicly  
17 filed documents that include witness affidavits signed by Ms.  
18 Eisen. And so those documents are now public documents. And  
19 our position is we may fully cross-examine the witness because  
20 the Board has chosen to file those as a public document.  
21 They're --

22 JUDGE ROSAS: Just --

23 MS. POLITO: -- not filed under seal.

24 JUDGE ROSAS: -- improper evidence?

25 MS. POLITO: Excuse me?

1 JUDGE ROSAS: Just -- just improper evidence?

2 MS. POLITO: Not for just improper evidence. It's a  
3 publicly sworn statement filed by the witness.

4 JUDGE ROSAS: But you're saying that it would be rel -- it  
5 would be questioning related to the 10(J).

6 MS. POLITO: No, no. That's --

7 JUDGE ROSAS: Oh, because you say that --

8 MS. POLITO: -- not what I said.

9 JUDGE ROSAS: -- it's been waived because it's been filed  
10 in that case?

11 MS. POLITO: That's correct. And it's --

12 JUDGE ROSAS: The -- the Jencks privilege?

13 MS. POLITO: -- it's not been -- sorry, Judge. It has not  
14 been filed under seal and it's not been filed --

15 JUDGE ROSAS: Correct.

16 MS. POLITO: -- confidentially. So it's been waived. I  
17 don't know what the examination would be with respect to those  
18 statements. But I do want to alert the judge to our position  
19 that those statements have been publicly filed in a federal  
20 court proceeding. They were not filed under seal and they are  
21 sworn statements. And they are tools that we may use in cross-  
22 examination, separate and apart from the Jencks rule.

23 MS. CACACCIO: Moreover, Your Honor, obviously this is the  
24 first we're hearing of this. It certainly is going to throw  
25 off the rest of our week. We expected the cross-examination.



1 No one said anything otherwise. So I'm going to have to try to  
2 scramble and see what I can do. If -- if you go with this  
3 plan, I'm going to have to figure out what I can do with  
4 witnesses for the rest of --

5 JUDGE ROSAS: Like I said, I'm mulling it over.

6 MS. CACACCIO: Okay.

7 JUDGE ROSAS: All right. Let's take a recess and we'll  
8 reconvene, ready to go right into the questioning.

9 MS. CACACCIO: How long is the recess, Judge?

10 JUDGE ROSAS: All right, go ahead. We're on break. We're  
11 off the record.

12 (Off the record at 10:57 a.m.)

13 MS. CACACCIO: Would you like me to resume direct  
14 examination?

15 JUDGE ROSAS: Please.

16 **RESUMED DIRECT EXAMINATION**

17 Q BY MS. CACACCIO: Michelle, did you notice any physical  
18 changes to your store after August 23rd?

19 A The first physical change was the removal of a backroom  
20 carpet.

21 Q Can you tell us a little bit about that carpet?

22 A Sure. There's a backroom located on -- that was put in, I  
23 think, the last remodel, so maybe a dozen years ago or so. It  
24 was intended initially for conferences, which is why it was  
25 carpeted.

1           It had since been commandeered as a supply room and an  
2   employee breakroom. The carpet was dirty. It had a lot of  
3   spilled coffee and all sorts of stuff on it. And I don't know  
4   why, but for some reason that was the first thing that was  
5   focused on after we went public with the union campaign.

6   Q     How did you learn about the carpet removal?

7   A     There were members of corporate and facilities walking  
8   through the store, taking note of things. That was one of the  
9   things that was talked about pretty heavily. We had a problem  
10  with fruit flies at the time. And so they attributed the fruit  
11  fly issue with the backroom carpet.

12  Q     And what ended up happening with the carpet?

13  A     It was removed and the entire -- that entirety of the  
14  backroom was separately remodeled before the official remodel  
15  that happened in October.

16  Q     How long did that take?

17  A     It was supposed to be two days, we were told. It ended up  
18  taking about a week.

19  Q     And what impact, if any, did that have on your work?

20  A     Besides being a big pain in the butt, all of -- everything  
21  in the backroom had to be emptied out and stored either outside  
22  of the store or in the store lobby. So it was in the way for  
23  customers and our operations. It also took the -- the only  
24  area in the store we had that was not the lobby of the store  
25  where we could, you know, take our breaks and store our

1     personal items, have any sort of conversations that were not on  
2     the floor. It removed that element from the store.

3     Q     Now, you said that there was a renovation later. What was  
4     the renovation that you learned about?

5     A     We found out, I think, middle of -- middle of September  
6     that the store was going to be closed for a week in October for  
7     what they were calling a remodel.

8     Q     How did you learn that?

9     A     Our store manager told us. It was also talked about in  
10    the first -- I believe either the first listening session or  
11    possibly the second one on the 19th of September.

12    Q     And did you ever hear any comments from any managers about  
13    the renovation?

14    A     It was unexpected is what I was told. Having been with  
15    the company for as long as I have, these remodels are usually  
16    planned a couple of years in advance. There's a lot of  
17    logistics that have to go into making sure that the partners  
18    are housed in other stores so that they get their hours. I've  
19    also never known it to only take a week. It's usually, you  
20    know, several weeks. So it was an unusual circumstance to  
21    begin with.

22    Q     When did the renovation occur?

23    A     I think we were closed October 11th through the 16th or  
24    somewhere in that -- somewhere in that realm.

25    Q     And what were employees supposed to do for work during the

1 renovation?

2 A There were a couple of options proposed. One was to see  
3 if they could be scheduled at other locations in the area. The  
4 other option was to take vacation time if you had any accrued  
5 or you could take unpaid time off.

6 Q And who made those proposals?

7 A In my case specifically, Patty, our store manager, sent me  
8 a text message asking me what I would prefer for that period of  
9 time. I responded that I would use vacation time.

10 Q And so -- so what did you end up doing?

11 A I ended being -- taking the week and using whatever  
12 vacation time I had accrued.

13 Q And did you notice any changes when you returned?

14 A Physical changes?

15 Q Yes.

16 A Not -- not many for a -- for a full remodel. They -- I  
17 think they pushed the bar are out something like 12 inches.  
18 They separated the bars -- the two espresso bars and put an  
19 individual rinse sink and ice bin for each of those bars. And  
20 then they added the addition of a -- a digital order screen  
21 that allowed customers to see what -- at what point in the  
22 process their order was.

23 MS. CACACCIO: Your Honor, can I just have one second?

24 Q BY MS. CACACCIO: Had you heard anything -- you mentioned  
25 that there weren't a lot -- you didn't notice a lot of changes

1     when you got back. Did anyone comment on that at all?

2     A     Yeah, we all commented on that. Most of us commented on  
3     that.

4     Q     And what did you say?

5     A     That if this was a -- a remodel, we would have expected  
6     them to -- to do more. It's a very old store, and so it hadn't  
7     been remodeled in at least a decade, probably longer than that.  
8     And so I was anticipating something that would be more useful  
9     to us in our jobs.

10    Q     Did management ever make comments about it?

11    A     One of our store managers, Dustin Taylor, commented to a  
12    couple of partners that we shouldn't worry because this was  
13    just a fake remodel and that the real one was slated to happen  
14    sometime in the early spring or late winter of 2022.

15    Q     Now, you said that there was a remodel that was going to  
16    happen in 2022. Who told you about that?

17    A     The first I heard of it was from Dustin.

18    Q     And what did Dustin say?

19    A     Just that this -- the one that we had just been shut down  
20    for a week for was -- he used the word "fake", and that  
21    the -- the real one that would shut us down for, you know,  
22    close to two months was slated to happen, I think he -- he had  
23    thought he had gave an approximate date of late winter to early  
24    spring of 2022.

25    Q     And when did you have that conversation with him?



1 A He was having it with several partners before -- before I  
2 heard him say it the week after we reopened. I think that date  
3 was Monday the 18th of October.

4 Q Was that the -- did that -- did that remodel ever happen?

5 A It did not.

6 Q So what did you do about it, if anything?

7 A Once that kind of was clocked in and we had heard it sort  
8 of whispered about, having had -- our store manager had had  
9 some conversations with the shift supervisors leading up to  
10 that time period. Mostly, it was shift supervisors asking for  
11 more information so that we could start to, you know, plan our  
12 lives around that proposed shut down. Eventually, I sent -- I  
13 believe it was -- I believe it was Bridgett Shannon, a shift  
14 supervisor at our store, sent an email to Alan Model of Littler  
15 Mendelson requesting to bargain over the proposed or the  
16 upcoming shutdown of Elmwood for this remodel. We received a  
17 response saying that after speaking to the company, there was  
18 no upcoming shutdown scheduled for the Elmwood location.

19 MS. CACACCIO: Your Honor, can we go off the record  
20 briefly?

21 JUDGE ROSAS: Off the record.

22 (Off the record at 11:24 a.m.)

23 JUDGE ROSAS: Back on.

24 **RESUMED DIRECT EXAMINATION**

25 Q BY MS. CACACCIO:

1 Ms. Eisen, can you look at General Counsel Exhibit 32? Can you  
2 identify that document, it's front and back?

3 A The -- the bottom portion and the back is an email sent  
4 from Bridgett Shannon to Alan Model requesting that we bargain  
5 over the upcoming closure of the Elmwood location.

6 Q And were you included on that?

7 A I was cc'd on it, yes.

8 Q Okay. And what happened after that?

9 A The top portion is the response from Mr. Model stating  
10 that as of now, there is no proposed date for an Elmwood  
11 closure.

12 Q And --

13 MS. POLITO: Objection, Your Honor, because that's not the  
14 document. If they're seeking to include the document, the  
15 document speaks for itself and contains additional language  
16 other than what the witness is testifying to.

17 JUDGE ROSAS: Objection is sustained at this time. The  
18 General -- the exhibit is before the witness. It is not in  
19 evidence, and I don't want it read from other than to be  
20 identified in order to be offered, right?

21 So you're offering this into evidence?

22 MS. CACACCIO: Yes, Your Honor. And she wasn't reading  
23 from it, either, but I am offering it now, so.

24 JUDGE ROSAS: Okay. Any objections?

25 MS. POLITO: Yes, Your Honor. A, we object on the grounds

1 of relevancy. Ms. -- I'm not sure why it's relevant to this  
2 proceeding, and Ms. Eisner (sic) has testified that the Elmwood  
3 cafe was not remodeled, number 1. Number 2, the email seems to  
4 attempt to put into play bargaining requests that have been  
5 made between the parties, so to that extent, we would ask for  
6 all -- any and all such emails exchange with Ms. Eisen, Mr.  
7 Hayes, and any other member of the organizing committee  
8 regarding bargaining. And last, Your Honor, this email is from  
9 Mr. Model, who is an attorney at Littler. By no means is this  
10 particular email privileged, but we are reserving all of our  
11 rights with respect to any other emails identifying any  
12 attorneys at Littler that may be subject to attorney client  
13 privilege. And the only reason this would not be is because of  
14 the request relating to bargaining, which again, makes it an  
15 in -- incomplete record, and we would request all of the email  
16 exchanges regarding bargaining between all parties.

17 JUDGE ROSAS: The email -- the email refers to the closure  
18 of a store. Which store?

19 MS. CACACCIO: The Elmwood Avenue location.

20 JUDGE ROSAS: All right. Overruled. General Counsel's 32  
21 is received.

22 **(General Counsel Exhibit Number 32 Received into Evidence)**

23 MS. POLITO: And just for the record, Judge, it doesn't  
24 relate to the closing the store, it relates to a remodel of a  
25 cafe at a particular store.



1 JUDGE ROSAS: Counsel, you can cross-examine ov -- over  
2 it.

3 Next question.

4 Q BY MS. CACACCIO: Michelle, when was the last time that  
5 you noticed your store got a new barista?

6 A Until very -- we have had three recent hires in the last  
7 few weeks, but are you asking prior to that?

8 Q Yes.

9 A The last hiring into the Elmwood location was done in  
10 October of 2021.

11 Q And the ones that you got just a few weeks ago, do you  
12 remember approximately when they started?

13 A They didn't train at our location. I believe their hire  
14 date would have needed to have been early to mid-June.

15 Q And why do you think that?

16 A Based on the training schedule. That's how much time they  
17 would have needed to train before coming on the floor as -- as  
18 fully certified baristas, and they -- they entered our schedule  
19 around the end of June.

20 Q And how many employees were hired in the end of October of  
21 2021?

22 A There were seven total, I believe, that were hired new,  
23 and there was one that was transferred in from another  
24 location.

25 Q And in your opinion, did the store need those new hires?

1 A We did not.

2 Q Why not?

3 A We were fully staffed based on the needs of the business,  
4 which is what the -- what the company would call that. We  
5 stated as such in -- at several locations. When we were asked  
6 about staffing as to whether we thought we were adequate  
7 staffed, we said we were.

8 Q And when did you -- when did you tell them that?

9 A At every listening session, we were asked that question.

10 Q What, if any, other effect did the hiring of new employees  
11 to the Elwood store have on you back in October?

12 A Well, it put us well over what would be a normal capacity  
13 on the floor behind the counter, which created a whole bunch of  
14 different effects in terms of tripping over people, in -- in --  
15 in that regard. It also shortened our tips. The more people  
16 that are working, equals the more hours worked, and the way  
17 that tips are processed, it's dollars divided by hours. So  
18 there are more hours being worked, then -- and the tips remain  
19 the same, it's a -- it's a smaller number per hour that people  
20 are getting in tips.

21 Q Do you have any specific examples of times when you  
22 thought you were overstaffed?

23 A There was one particular morning, it would have been late  
24 October. I think there was somewhere between 12 and 14  
25 partners at our store, which is just -- that's on the floor

1 working, which is an absurd number of people at a half-day  
2 location, where you don't have a drive-thru window and that  
3 sort of thing to deal with. I was in the customer support  
4 role, which is a very fluid role that allows you to --  
5 essentially, you're doing the stocking and the -- the cleaning  
6 tasks. It's on a -- like, a rotating timer and you're brewing  
7 the coffee, and there's a whole sequence to it. One of the  
8 parts of the sequence is to do what's called the lobby slide,  
9 which is -- takes you out into the lobby to wipe down the  
10 tables and the -- the high touch points, the door -- the  
11 handles. And I reached that point in my sequence, and I went  
12 to go around the counter to go do the lobby slide, and the  
13 shift supervisor who was on at the time said, you don't need to  
14 do that. I have Blue stationed in the lobby. And I said, you  
15 have a partner just standing in the lobby solely to wipe down  
16 tables and -- and door handles? And he said, Michelle, I have  
17 so many people here, I don't know what else to do with them.

18 Q How many people, in your opinion, would be fully staffed  
19 for your store?

20 A Fully staffed for peak, eight would be an ideal number.

21 Q Okay. And what about not peak?

22 A It would depend on the day part. You would probably have  
23 anywhere between four and five to take care of breaks.

24 Q And do you know how many employees, approximately, worked  
25 at your store in October 2021?

1 A Prior to the hiring?

2 Q Correct. Well -- yes.

3 A I think we were mid-20s, maybe 25 to 27.

4 Q And what about after that?

5 A I believe the total number brought us up to 34.

6 Q And how do you know that?

7 A Well, I -- I know that based on the schedules that are  
8 posted. I also know what the final voter list looked like for  
9 the Elmwood location as well.

10 Q And if I showed you a copy of that -- of the voter list,  
11 would you be able to recognize it for us?

12 A Yes, I would.

13 MS. CACACCIO: Showing the witness General Counsel Exhibit  
14 33.

15 Q BY MS. CACACCIO: Ms. Eisen, what's in front of you?

16 A It is the copy of the voter list for the Elmwood Avenue  
17 location.

18 Q And how do you recognize it?

19 A I've seen it. I was sent it via email.

20 Q And when did you see it?

21 A When it was first released by the company. Sometime in, I  
22 think, early November of 2021.

23 Q And is it fair and accurate, as far as you know?

24 A As far as I know, yes.

25 MS. CACACCIO: Your Honor, I'm going to offer General

1 Counsel's Exhibit 33.

2 JUDGE ROSAS: Voir dire? Objection?

3 MS. POLITO: Just a few questions.

4 **VOIR DIRE EXAMINATION**

5 Q BY MS. POLITO: Ms. Eisner, you said that you received it  
6 via email. Who did you receive it from via email?

7 A Ian Hayes.

8 Q Excuse me. And when did you receive it via email?

9 A Whatever day it was released to our attorneys by the  
10 company.

11 Q So your understanding is that the company sent the  
12 material to Mr. Hayes, and then he sent it to you; is that  
13 correct?

14 A Correct. That is my understanding.

15 Q Is it your also understanding that the company prepared  
16 Exhibit Number 33?

17 A As far as I know, yes, the company had prepared that.

18 MS. POLITO: No objection, Judge.

19 JUDGE ROSAS: General Counsel's 33 is received.

20 **(General Counsel Exhibit Number 33 Received into Evidence)**

21 **RESUMED DIRECT EXAMINATION**

22 Q BY MS. CACACCIO: Ms. Eisen, looking at General Counsel's  
23 Exhibit 33, has your store lost any employees since this was  
24 created?

25 A Yes, it has.



1 Q Which ones?

2 A Do you want me to go by name or number?

3 Q If you could do both, that'd be really helpful to the  
4 Court.

5 A Sure. 1, Tyler Anatole, 2, Stephen Bishop, 4, Janae  
6 Cabrera, 7, Blue Digiulio, 9, Michael Donovan, 12 Cassie --  
7 Cassie Fleischer, 13, Leyla Gentil, 16, Tatyana Gonzalez, 17,  
8 Cortlin Harrison, 18, LaRue Heutmaker, 20, Erin Kidd, 21,  
9 Shariah Lyons, 23, Josh Mendez, 24, Kellen Mon -- Montanye, or  
10 Kellen Higgins, 26, Kevin Parham, 29, Alex Rosche is not a  
11 partner at Elmwood, 30, Trenton Santoro-Bissett, 31, Alexa  
12 never actually worked at the store. She was hired, but didn't  
13 show up. 32, Tati Staniszewski, 33, Courtney Stroeher, 34,  
14 Alyssa Warrior, and that is it.

15 Q So since October, when this list was created --

16 A Um-hum.

17 Q -- and the time you said you just received new hires, how  
18 many employees have been hired for your store?

19 A There was one transfer that wasn't listed here, Bridgett  
20 Shannon, and there was one more transfer, Nabe O'Brien  
21 (phonetic), sometime in early spring. Other than that, there  
22 have been no new hires into the store.

23 Q So how many employees, approximately, work in the store  
24 right now? Do you know?

25 A With the -- with the three that were just brought on, I

1 think we're at 23, maybe.

2 Q And how do you know that?

3 A Again, based on the weekly schedules that are posted.

4 Q And was this gap between hiring typical in your  
5 experience?

6 A Not in my experience, no.

7 Q Why not?

8 A Because the store -- the company's always hiring. And  
9 I -- I don't say that lightly. I mean, there's a po -- there's  
10 a post in every single Starbucks in the country that says "we  
11 are hiring", and that's what we're told to tell people when  
12 they approach us at the register to ask if we're hiring, that  
13 we are always hiring. And in my experience, we are always  
14 hiring. It's a very high -- you know, it can be a very high  
15 turnover industry, and so there's always a need to replace  
16 somebody. There's -- it's generally a very flexible schedule,  
17 which means that current partners are adjusting their schedule  
18 for other things, other jobs, or school, and so in order to  
19 replace those people with, you know, more limited availability,  
20 or to have appropriate people trained to take over for people  
21 who may be, we're continually hiring.

22 Q What impact, if any, is this having on your store's  
23 operations?

24 A It's been very detrimental. There's been several  
25 occasions just in the last couple of months where one call off

1 has meant having to shut down the entire store because there is  
2 not enough staff to cover that one person who can't come in and  
3 work.

4 Q And is that typical?

5 A Absolutely not.

6 Q What usually happens?

7 A There is a pool of people who you can call and reach out  
8 to and say, hey, so and so called in. They're not feeling  
9 well. Do you want to come in and work this shift?

10 Q Directing your attention to one of Respondent's stores at  
11 Walden and Anderson Road. Are you familiar with that store?

12 A I am, yes.

13 Q How are you familiar with that store?

14 A Aside from it being a store in the market that I've gone  
15 to to either -- as a customer or to pick up supplies, I'm  
16 familiar with it as one of the -- the petitions that was filed  
17 in the second round of -- of Buffalo petitions in early  
18 September.

19 Q Do you have any familiarity with the union support at that  
20 store?

21 A Currently, or --

22 MS. POLITO: Objection, Judge.

23 JUDGE ROSAS: What's the objection?

24 MS. POLITO: She has no personal knowledge with respect to  
25 that store. I mean, we -- she doesn't work at the store.



1 JUDGE ROSAS: Well, repeat the question?

2 MS. CACACCIO: I asked if she had any familiarity with the  
3 union support of the store.

4 JUDGE ROSAS: I'll allow that. Let's see where it goes.

5 A I do, yes.

6 Q BY MS. CACACCIO: And how do you know that?

7 A One of the leaders of that store, Colin Cochran, is a good  
8 friend of mine, and so I knew when they were filing, what the  
9 union support was.

10 MS. POLITO: Object that the answer is based on hearsay.  
11 Colin can come in and testify to his own experience with  
12 respect to the store.

13 MS. CACACCIO: And the --

14 JUDGE ROSAS: Overruled this time. Let's see where it  
15 goes.

16 Next question.

17 Q BY MS. CACACCIO: So what happened after the petition was  
18 filed?

19 A The original one?

20 Q Yes.

21 A It was pulled in order not to restart the clock on the  
22 first three petitions, and then shortly after that, the Walden  
23 Anderson location was shut down.

24 Q How long did that closure last?

25 A It was initially said to be for a week. It was -- they

1       were told it was -- the partners there were being told it was  
2       being shut down to deal with pest issues.

3               MS. POLITO: I'm going to object to the answer also being  
4       hearsay. It doesn't sound to me like it's based on any  
5       personal knowledge, but based on what she was told by others.

6               JUDGE ROSAS: Is there going to be corroboration for this?

7               MS. CACACCIO: Yes, Judge.

8               JUDGE ROSAS: Eyewitnesses testifying to this?

9               MS. CACACCIO: Yes, Judge.

10              JUDGE ROSAS: All right. Subject to being stricken later  
11      on, requiring corroboration.

12      Q       BY MS. CACACCIO: Do you have any personal knowledge about  
13      the closure of that store?

14      A       Just what I saw in our -- a group meeting with partners  
15      who worked at that store, saying this is why they were told it  
16      was being shut down.

17      Q       And can you tell us, and I apologize if you said it, how  
18      long was the closure supposed to last?

19      A       Initially, a week to deal with pest issues. Then they  
20      were told that it was not opening again in a week. It was  
21      going to remain shut down for an undetermined period of time to  
22      become a closed training facility.

23      Q       Had you ever seen a closed training facility like that  
24      before?

25      A       I had not.

1 Q How was training performed before the centralization?

2 A Baristas, new baristas were hired into whatever store was  
3 going to be their home store by that store manager, and then  
4 the training was done on the floor of that home store by what's  
5 called a barista trainer.

6 Q Are barista trainers compensated?

7 A They are.

8 Q Had you ever experienced a -- let me withdraw that.

9 While on the national shutdown, how were employees trained in  
10 the market?

11 A They were all being trained within that closed store.

12 Q Had you ever experienced anything like that before?

13 A I had not.

14 Q What impact did, if any, did the centralizing of training  
15 have on existing employees?

16 A Well, it removed the -- the aspect of getting to know your  
17 new coworkers prior to them entering your store as fully-  
18 trained baristas. It also took the -- the training bonuses  
19 away from the trained barista trainers within those stores.

20 Q Did you observe any of the new hires that came from that  
21 training facility?

22 A I did, yes.

23 Q How many?

24 A Five of them were brought into Elmwood in late October.

25 Q And how, in your opinion, was the work performed?

1 A It appeared that they had little to no training.

2 Q And I apologize if I -- if I didn't ask this, but what is  
3 a barista trainer? What do they do?

4 A A barista trainer is a kind of a position between a  
5 barista and a shift supervisor. They go through a tra --

6 MS. POLITO: I'm going to object again, Judge. This  
7 witness is not a barista trainer, so she cannot testify as to  
8 what a barista trainer does. She can only testify to what  
9 she's maybe perhaps herself witnessed or experienced, not what  
10 these other people may or may not have experienced during their  
11 training.

12 JUDGE ROSAS: Sustained. Foundation?

13 Q BY MS. CACACCIO: Have you ever been a barista trainer?

14 A Yes, I have.

15 Q Can you tell us what a barista trainer does?

16 A A barista is a barista who goes through a training process  
17 to learn how to train other baristas.

18 Q So how -- how was their work performance when they came  
19 back from that training facility?

20 A It was poor --

21 MS. POLITO: Object that there has been no indication that  
22 she's worked with each of these five individuals, who they are,  
23 what their role was.

24 JUDGE ROSAS: Object -- sustained as to form. A little  
25 vague.

1 Q BY MS. CACACCIO: Did you work with any of these baristas  
2 when they came back from the training facility?

3 A Yes, I did.

4 Q And what did you observe?

5 A That their training was poor or nonexistent.

6 Q Why do you think that?

7 A They approached me to tell me that.

8 Q And so what did you do?

9 MS. POLITO: Objection. Hearsay. Those individuals can  
10 come in and talk about their experiences.

11 MS. CACACCIO: Your Honor, this witness has already  
12 testified that she's observed their behavior. I can go into  
13 that more, if you'd like.

14 JUDGE ROSAS: Well, as to statements that other employees  
15 told this employee, I'm going to sustain the objection, unless  
16 you can assure me that there will be a specific instance of a  
17 corroboration, and that would have to be specified here --

18 MS. CACACCIO: I'll do it the short way.

19 JUDGE ROSAS: -- what she is referring to.

20 MS. CACACCIO: I understand.

21 Q BY MS. CACACCIO: Did you ever observe them yourself?

22 A Yes, I did.

23 Q What did you observe?

24 A Would you like a name?

25 Q Yes, please.

1     A     The first day that Malik Code, Malik goes by August now,  
2     was on the floor, I was assigned by the shift supervisor to  
3     shadow them. They were on the point of sale location, which is  
4     the front register. We were talking. It appeared that they  
5     were distressed. I asked, you know, if they were okay, and  
6     they said, I just wanted to let you know that I feel completely  
7     untrained to be here right now. And I said that was okay. We  
8     understood what was going on, and that I would help them in any  
9     way that I could.

10    Q     How was training handled after Walden and Anderson  
11    reopened to the public?

12    A     There were two other stores. One of them might have  
13    remained the Walden Anderson location, that were solely acting  
14    as training stores. So they weren't closed, but all of the  
15    baristas that were being hired were being trained in one of two  
16    locations in Buffalo, not necessarily at the store that would  
17    become their home store.

18    Q     And do you know what stores those were?

19    A     I think that they were Niagara Falls Boulevard and East  
20    Robinson.

21    Q     And where were the new hires that were just trained -- or  
22    that were just brought into your store trained?

23    A     They were trained at the Walden Anderson location.

24    Q     The ones that came in just three weeks ago?

25    A     Oh, I'm so sorry. The -- I've only spoken to one, Al

1 (phonetic). Al said they were trained for one week at Niagara  
2 Falls Boulevard, and then they were trained for one week at the  
3 Tonawanda location.

4 Q I'd like to direct your attention to your wages. When was  
5 the last time you received a seniority-based wage increase with  
6 Respondent?

7 A I have -- I have not received a seniority-based wage  
8 increase.

9 Q Have you ever heard of such a thing?

10 A I had not heard of such a thing until October of 2021.

11 Q And what happened with that?

12 A There was an announcement made from the company, I believe  
13 the date was October 27th, 2021, that they would be  
14 implementing a seniority-based raise increase.

15 Q And how was it announced?

16 A I heard it through the media, initially.

17 Q And what about after that? Did you ever hear it from the  
18 company itself?

19 A There was a -- it appeared in the weekly update, which  
20 would have been the following, I think the 27th was the  
21 Wednesday, so it would have appeared in the following weekly  
22 update, which would have been Monday. Whatever the Monday was.

23 Q And from the company, did you ever learn what the terms of  
24 that seniority-based raise were going to be?

25 A Yes. I -- they were a bit vague, but it essentially said

1 if you've been with the company for six years or more, you  
2 could get up to a ten percent wage increase, and if -- if you  
3 had been with the company for between two and five years, it  
4 was some other percentage. I didn't pay attention to it --  
5 that because it didn't -- it didn't pertain to me.

6 Q And in your ten plus years with the company prior to this,  
7 had you ever received a seniority-based wage increase?

8 A I had not.

9 Q And was this something that had been discussed before it  
10 occurred?

11 A It was a major talking point of the union campaign.

12 Q And did you ever receive one, as far as you know?

13 A A seniority --

14 MS. POLITO: Objection. Asked and answered.

15 JUDGE ROSAS: Repeat the question?

16 MS. CACACCIO: I asked if she ever received one.

17 JUDGE ROSAS: A seniority-based wage increase?

18 MS. CACACCIO: Correct. The one that was announced.

19 JUDGE ROSAS: Did she received a -- one for the first  
20 time?

21 MS. CACACCIO: Has she rec -- did she receive one after  
22 the announcement.

23 JUDGE ROSAS: You're objecting to that, Counsel?

24 MS. POLITO: It's -- she already asked it and answered it,  
25 Judge.



1 JUDGE ROSAS: Not that I recall. Overruled.

2 You can answer.

3 Q BY MS. CACACCIO: Did you receive one after the  
4 announcement?

5 A Not that I'm -- not that I'm aware of, no.

6 Q I want to direct your attention to the Employer's leave  
7 request policies. What do you have to do if you want to take  
8 time off?

9 A It depends on the circumstances. If it's just a vacation,  
10 there's a partner hours app. You go into that, there's a  
11 little plus sign for requests offs, and then you submit the  
12 dates that you are requesting off.

13 Q And what if it lasts longer than two weeks?

14 A Until recently, the -- there -- there -- there was no  
15 stipulation or restrictions on that as far as I know.

16 Q And what do you -- what do you mean, "until recently"?

17 A I've since been told that if you're going to take a --  
18 a -- a leave for more than two weeks, you have to apply for a  
19 leave of absence, which is very different.

20 Q How did you learn that?

21 A A coworker tried to take a -- a two-and-a-half-week  
22 vacation, and was told that she was going to have to apply for  
23 a leave of absence if she wanted to be away from the store for  
24 that long.

25 MS. POLITO: Objection. Hearsay.

1 JUDGE ROSAS: Hold on. What?

2 MS. POLITO: It's hearsay. The coworker can come in and  
3 testify as to her experiences. There's no reason for Ms.  
4 Eisner (sic) to be testifying as to what a coworker may or may  
5 not have done with respect to a request for leave. It's all  
6 speculation and hearsay, Judge.

7 MS. CACACCIO: And the coworker will testify, Judge, but  
8 this witness has direct knowledge about it.

9 JUDGE ROSAS: Subject to. Overruled.

10 Q BY MS. CACACCIO: Who was it?

11 A Jaz Brisack.

12 Q And what happened there, do you know?

13 A She was told that the vacation request was being denied.  
14 She would need to apply for a leave of absence if she wanted to  
15 take the time off. She did go through the process of applying  
16 for the leave of absence, was assured that it would be  
17 approved, and then found out it was later denied.

18 Q What do you know about leaves of absence?

19 A Up until the point of the pandemic, a leave of absence was  
20 only approved for medical reasons.

21 Q How do you know that?

22 A Because I tried to take a leave of absence, or looked into  
23 taking a leave of absence, back in 2016, I believe, and I was  
24 told by the company that unless it was for medical reasons, it  
25 would not be approved.

1 Q And did you ever end up taking a leave of absence for any  
2 reason?

3 A In the winter of 2018, I broke my ankle, and did take a  
4 leave of absence for a medical reason.

5 Q And what about now? What are leaves of absence used for  
6 as far as you know?

7 A As far as I know, the policy has not changed. At least  
8 I've not seen a written policy change. The pandemic, it seemed  
9 like there was a loosening of that. During the pandemic,  
10 partners were encouraged to apply and take leaves of absence  
11 shortly after the stores reopened in -- in the early stages of  
12 the pandemic, because if -- the company said, if you would like  
13 to take a leave of absence and utilize the unemployment  
14 benefits as opposed to staying on our payroll and not being  
15 able to be given the number of hours you would need, then they  
16 were encouraging people to do that.

17 Q Are you familiar with a person by the name of Cassie  
18 Fleischer?

19 A Yes, I am.

20 Q How do you know her?

21 A She's a friend. She's also one of my partners at the  
22 Elmwood location.

23 Q Is she currently?

24 A She is not.

25 Q What happened? Do you know what happened?



1 A She was --

2 MS. POLITO: Same objection, Judge. If Ms. -- Ms.  
3 Fleisher can come in and testify. Ms. Eisner (sic) has no  
4 knowledge, other than what Ms. Fleischer has said to her about  
5 her termination. She should not be permitted to testify about  
6 Ms. Fleischer's exiting from the company. It's all hearsay.  
7 It's all speculation, and it's not even a complete record.

8 MS. CACACCIO: May I be heard?

9 JUDGE ROSAS: Let's -- let's -- let's rephrase that and  
10 establish some foundation as to her knowledge regarding that  
11 individual's status with the company.

12 Q BY MS. CACACCIO: How do you know that she doesn't work  
13 there anymore?

14 A She doesn't work there anymore, and she told me when she  
15 was terminated.

16 Q Were you part of the situation at all?

17 A I was, yes.

18 Q How?

19 A I sat in as a witness, a union witness, to a meeting  
20 between Patty Shanley, our store manager, and Michaela Murphy,  
21 our district manager.

22 Q Did you record that meeting?

23 A Yes, I did.

24 Q How did you record it?

25 A I used my Apple Watch.

1 Q And what did you do after you recorded it?

2 A I sent it to Ian Hayes, our attorney.

3 Q And have you listened to it?

4 A I have.

5 Q Is it full and accurate in its representation?

6 A It is, yes.

7 MS. CACACCIO: So Your Honor, we have another recording.  
8 I don't know how you want to handle it. I don't know if --  
9 it's noon. Do you want to do it -- do you want to start it?  
10 Do you want to do it now?

11 JUDGE ROSAS: We'll do it now.

12 MS. CACACCIO: Okay.

13 JUDGE ROSAS: Does anybody need to take a -- a -- a five-  
14 minute break?

15 MS. POLITO: No, but I do have some voir dire before it  
16 starts, please.

17 JUDGE ROSAS: You have what?

18 MS. POLITO: Some voir dire on the recording before it  
19 starts.

20 JUDGE ROSAS: Go ahead.

21 **VOIR DIRE EXAMINATION**

22 Q BY MS. POLITO: So Ms. Fleischer -- or I'm sorry, Ms.  
23 Eisner (sic), you indicated that Ms. Fleisher was going into a  
24 disciplinary meeting and asked you to be a witness; is that  
25 correct?

1 MS. CACACCIO: Objection. Assumes facts not in evidence.  
2 That's not what she testified to.

3 JUDGE ROSAS: Repeat the question?

4 MS. POLITO: The question was whether or not Ms. Fleischer  
5 asked Ms. Eisner (sic) to attend a disciplinary meeting with  
6 her.

7 JUDGE ROSAS: Overruled. You can answer.

8 A She asked me to attend the meeting with her.

9 Q BY MS. POLITO: Did she think she was going to be  
10 terminated at the meeting?

11 A She --

12 MS. CACACCIO: Objection. Speculation.

13 JUDGE ROSAS: Sustained. Rephrase.

14 Q BY MS. POLITO: Isn't it a -- the meeting was scheduled  
15 with respect to Ms. Fleischer's termination; isn't that  
16 correct?

17 MS. CACACCIO: Objection. Speculation.

18 JUDGE ROSAS: Hold on. Hold on. I'm going to sustain the  
19 objection. It's beyond the scope of voir dire with respect to  
20 this audio --

21 MS. POLITO: Well, -- well --

22 JUDGE ROSAS: -- that's being offered to be played, before  
23 it's played.

24 MS. POLITO: Okay, Judge.

25 JUDGE ROSAS: Go ahead. Any other questions regarding

1       that? You can save all that for cross.

2       Q     BY MS. POLITO: The recording that you took on your Apple  
3       Watch, you then -- after the recording, you gave to Mr. Hayes?

4       A     That is correct.

5       Q     And -- and how did you send it to Mr. Hayes, through a  
6       Google drive?

7           MR. HAYES: Your Honor, objection. I -- I -- over here,  
8       Your Honor. I've been kind of lax about this so far, but these  
9       questions have to -- are covered by attorney-client privilege,  
10      if it's about communications between Ms. Eisen and me.

11       MS. POLITO: It again, Judge, goes to the authenticity of  
12      the recording. If she do -- does it on the watch, sends it in  
13      a different format, over the --

14       JUDGE ROSAS: Yes, abso -- overruled.

15       You can answer.

16      A     Yes, it was sent, I believe, via Google Drive.

17      Q     BY MS. POLITO: Did you send anyone else?

18      A     Not that I'm aware of.

19      Q     And your understanding is that you sent a complete copy of  
20      the re -- of the audio recording from March 19, '22?

21      A     Yes.

22      Q     And do you still have the original recording?

23      A     I do, yes.

24       MS. POLITO: That's all I have, Judge.

25       JUDGE ROSAS: Objection as to this audio? What is the

1 exhibit number?

2 MS. CACACCIO: 34(a) is the recording.

3 JUDGE ROSAS: All right. Same objection as to the audio  
4 recording. General Counsel's 34(a) is -- will be played.  
5 Overruled.

6 MS. POLITO: Same -- same standing objection, Judge, with  
7 respect to --

8 JUDGE ROSAS: Correct.

9 MS. POLITO: Thank you.

10 MS. CACACCIO: And 34(b) is the transcript.

11 **RESUMED DIRECT EXAMINATION**

12 Q BY MS. CACACCIO: How many people were in this meeting?

13 A Four.

14 Q And who are they?

15 A Michaela Murphy, our district manager. Patty Shanley, the  
16 then store manager of Elmwood. Cassie Fleischer and myself.

17 Q And are there any other voices on this recording as far as  
18 you know?

19 A You're going to -- we met in a cafe, not -- not the  
20 Elmwood location, so you're going to probably hear people at  
21 other cafe tables.

22 Q And about how long was the meeting?

23 A A little over a half-hour, I think.

24 Q Did you --

25 A Or somewhere in there.



1 Q Did you make any alterations to the recording?

2 A I did not.

3 Q And I'd -- I'd like to point out myself that the back of  
4 this says "Employer Captive Audience Meeting". I assure I had  
5 nothing to do with that. I don't know why it keeps saying  
6 that. But we're happy to change that on 34(b).

7 JUDGE ROSAS: What -- what -- what did you say at the  
8 outset?

9 MS. CACACCIO: It -- it's listed as a captive audience  
10 meeting, which is not something that we said.

11 JUDGE ROSAS: Correct.

12 MS. CACACCIO: But that's what it's listed as and so we're  
13 happy to change that --

14 JUDGE ROSAS: Okay.

15 MS. CACACCIO: -- preemptively.

16 JUDGE ROSAS: Okay.

17 MS. CACACCIO: The recording was playing, but I am not  
18 plugged in. So nothing was happening. So I'm trying to figure  
19 out what's going on here. So if you give me just a second to  
20 plug in.

21 Q BY MS. CACACCIO: Sorry. Before we play it. Does this  
22 recording cover the meeting in its entirety?

23 A It does, yes.

24 (Audio played at 11:58 a.m., ending at 11:58 a.m.)

25 Q BY MS. CACACCIO: And do you remember when this meeting

1 occurred?

2 A It was the evening of Wednesday, March 9th.

3 Q And where were you?

4 A We were at Dash's Market, which is on the corner of Hertel  
5 and -- I don't know if it's, maybe, Parkside.

6 (Audio played at 11:58 a.m., ending at 11:58 a.m.)

7 MS. CACACCIO: Your Honor, the meeting -- the  
8 transcription for the meeting begins at about 3 minutes and 40  
9 seconds in, and it ends about a minute 30 before the  
10 transcription ends. As we discussed before, I'm happy to play  
11 the first 3 minutes and 40 seconds, if you like. Given that  
12 you're not going to be able to do it.

13 (Audio played at 11:59 a.m., ending at 12:02 p.m.)

14 Q BY MS. CACACCIO: So what's been happening up to this  
15 point?

16 A That's us walking through the parking lot into the back  
17 entrance, through the bottom part of the store, up an  
18 escalator, and then eventually to the table that Patty and  
19 Michaela are sitting at.

20 Q When you say "us", who do you mean?

21 A Myself and Cas -- Cassie Fleischer.

22 MS. CACACCIO: We're at 3:23 on the recording.

23 (Audio played at 12:02 p.m., ending at 12:02 p.m.)

24 Q BY MS. CACACCIO: Who responded "sure"?

25 A Patty.

- 1 Q And who's Patty?
- 2 A Patty Shanley was the store manager at Elmwood.
- 3 (Audio played at 12:03 p.m., ending at 12:03 p.m.)
- 4 Q BY MS. CACACCIO: Who was that voice?
- 5 A Michaela Murphy.
- 6 (Audio played at 12:03 p.m., ending at 12:03 p.m.)
- 7 Q BY MS. CACACCIO: Who is that?
- 8 A That's Michaela Murphy.
- 9 (Audio played at 12:03 p.m., ending at 12:05 p.m.)
- 10 Q BY MS. CACACCIO: Who responds?
- 11 A Cassie.
- 12 MS. CACACCIO: We're at 5:31.
- 13 (Audio played at 12:05 p.m., ending at 12:07 p.m.)
- 14 Q BY MS. CACACCIO: Who is this voice?
- 15 A Michaela Murphy.
- 16 MS. CACACCIO: We're at 7:37.
- 17 (Audio played at 12:07 p.m., ending at 12:10 p.m.)
- 18 Q BY MS. CACACCIO: Who's speaking right now?
- 19 A That is Patty Shanley.
- 20 MS. CACACCIO: We're at 1:14 -- I'm sorry -- 11:14.
- 21 (Audio played at 12:11 p.m., ending at 12:14 p.m.)
- 22 Q BY MS. CACACCIO: Who's talking right now?
- 23 A Michaela Murphy.
- 24 Q We're at 14:48.
- 25 (Audio played at 12:14 p.m., ending at 12:21 p.m.)

1 Q BY MS. CACACCIO: Who's talking right now?

2 A Michaela Murphy.

3 Q And who is that?

4 A Our district manager.

5 Q We're at 21:08.

6 (Audio played at 12:21 p.m., ending at 12:31 p.m.)

7 MS. CACACCIO: So that's the end of the transcription, but  
8 the recording continues, but I will play it per your request.

9 (Audio played at 12:31 p.m., ending at 12:33 p.m.)

10 Q BY MS. CACACCIO: What happened between the end of the  
11 meeting and the end of the recording?

12 A We were going back down the escalator. I think Cassie  
13 bought a salad for dinner, and then we walked out to the  
14 parking lot.

15 Q Is this recording a full recording of the meeting?

16 A It is, yes.

17 Q Did you make any alterations to it?

18 A I did not.

19 MS. CACACCIO: Your Honor, I now offer General Counsel's  
20 34(a), which is the recording. And I'm going to be offering  
21 34(b) with some, I think, easy oral amendments. Unidentified  
22 speaker 3, as Ms. Eisen just testified, is herself as we -- as  
23 we've all heard. Unidentified speaker 2 is Ms. Cassie  
24 Fleischer. Unidentified speaker 1 is Ms. Patty Shanley. And  
25 unidentified speaker 4 is Ms. Michaela Murphy. And rather than

1 employer captive audience meeting, it should say meeting on  
2 March 9th, regarding Ms. Fleischer.

3 JUDGE ROSAS: Respondent?

4 MS. POLITO: Judge, same standing objections with respect  
5 to the other recording and transcript.

6 JUDGE ROSAS: Okay. Same ruling. General Counsel's 34(a)  
7 is received.

8 **(General Counsel Exhibit Number 34(a) Received into Evidence)**

9 JUDGE ROSAS: General Counsel's 34(b) will be considered  
10 at the time it is submitted. I do have a question for General  
11 Counsel. I haven't seen these. I was told that they were  
12 referred to as unidentified speakers. Are they now referred to  
13 in some instances as speaker 1, 2, 3, and so on?

14 MS. POLITO: Yes.

15 MS. CACACCIO: Yes, Judge. In this -- in this particular  
16 recording. It depended on who transcribed it. In this  
17 particular it's identified speaker 2, unidentified speaker 4.  
18 They're not all like that, Judge, but this one is. And I am  
19 offering it at this time. And if what you're asking is that I  
20 make those changes within the document, I can do that. But I  
21 think that in this specific instance, I can -- we can do it the  
22 way I just proposed.

23 JUDGE ROSAS: So -- so this transcript refers to  
24 unidentified speakers 1 through 4?

25 MS. CACACCIO: Correct.

1 JUDGE ROSAS: Okay. So it seems to me that all you'd need  
2 to do there is just to have a glossary or something that'll say  
3 at the outset who 1, 2, 3, and 4 are. But you don't have that  
4 in the others?

5 MS. CACACCIO: Correct.

6 JUDGE ROSAS: Okay.

7 MS. CACACCIO: There may be -- there may be others that do  
8 have it, but the ones we talked about today it's not --

9 JUDGE ROSAS: So that would suffice. If there's some  
10 easier way of doing it rather than revising references to  
11 unidentified speakers, that would be fine. But just wondering.  
12 Okay.

13 MS. CACACCIO: Could we just have a brief moment?

14 JUDGE ROSAS: Okay. Off the record.

15 (Off the record at 12:35 p.m.)

16 MS. CACACCIO: I just want to make sure that I actually  
17 offered Exhibit 29(a). It was the recording -- oh. What  
18 happened to our sound system? Hang on. We lost the power.

19 JUDGE ROSAS: Oh. Did I --

20 MS. CACACCIO: Nope. Your Honor, did you touch the thing?

21 JUDGE ROSAS: I did.

22 MS. CACACCIO: Okay.

23 MS. POLITO: It's on.

24 MS. CACACCIO: It's on?

25 MS. POLITO: This guys on.

1 MS. CACACCIO: Okay.

2 JUDGE ROSAS: Does that help with --

3 MS. POLITO: Yes, Your Honor. It's now playing --

4 JUDGE ROSAS: -- the regular audio in the room as well?

5 MS. POLITO: Yes. It's a -- it's a little -- little  
6 heavy, but it actually is helping a lot, so thank you.

7 JUDGE ROSAS: Good.

8 MS. CACACCIO: I just want to confirm that I offered  
9 Exhibit 29(a), which was the recording of October 20th from  
10 this morning. I thought that I did. And I thought it was  
11 admitted, but I want to confirm that I did it. Are we on the  
12 record? Sorry? Okay. Good.

13 JUDGE ROSAS: I believe everything has gone in.

14 MS. CACACCIO: Okay.

15 JUDGE ROSAS: If it's not in, it's in over objection.

16 MS. CACACCIO: Okay.

17 JUDGE ROSAS: Continuing objections for all of them.

18 MS. CACACCIO: Your Honor, at this time I have no further  
19 questions for Ms. Eisen subject to re-call, of course, in the  
20 event that documents are produced to which we need to re-call  
21 her.

22 JUDGE ROSAS: Charging Party?

23 MR. HAYES: Thank you, Your Honor.

24 **DIRECT EXAMINATION**

25 Q BY MR. HAYES: Michelle, I'm going to ask you a few

1 questions about the testimony you've already given in this  
2 hearing. And because of the way we've had to do this, that's  
3 going back a couple days, so if you don't understand what I'm  
4 asking about, just say so, okay?

5 A Okay.

6 Q All right. Do you remember testifying about having a  
7 support manager come and replace another support manager who  
8 was temporarily not in your store?

9 A I do, yes.

10 Q Okay. In your experience, did that same thing happen with  
11 store managers before August of 2021?

12 A It did not, no.

13 Q What would happen if a store manager wasn't in the store?

14 A If the store manager was on vacation there would be a  
15 proxy store manager who would be the store manager of another  
16 store in the area. They may stop in on occasion to check on us  
17 but they wouldn't be stationed in the store at the frequency  
18 that the -- the actual store manager would be there.

19 Q Does that mean that the proxy store manager wasn't  
20 physical assigned to your store in that case?

21 A No, not physically. They would call and check in. They  
22 may stop in on the way to their store that they would be  
23 responsible for. They would be the person we would call if  
24 there was an issue that couldn't be handled by one of the shift  
25 supervisors.



1 Q Okay. And before September of 2021 did you ever see more  
2 than one manager working in a store at a time?

3 A Assigned to that store?

4 Q Well, we'll take it one at a time. First of all --  
5 yeah -- answer the question about being -- having more than one  
6 manager assigned to a store.

7 A No.

8 Q Did you ever see more than one manager work in a store?

9 A No.

10 Q And you're answering based on your entire experience with  
11 Starbucks, right?

12 A Yes, I am.

13 Q Now, you -- you testified about a series of listening  
14 sessions that you experienced in the -- in the Company,  
15 correct?

16 A Yes.

17 Q Before September of 2021, how many listening sessions had  
18 you attended while working for Starbucks?

19 A Zero.

20 Q Are you aware of any listening sessions happening aside  
21 from ones you might have attended?

22 A I was not.

23 Q I'm going to ask you about the listening session on  
24 October 20th. Do you remember testifying about that?

25 A Yes, I do.

1 Q Okay. Did you believe that attendance at that meeting was  
2 mandatory?

3 A I did, yes.

4 Q Based on what?

5 A It was an invitation handed to me with a listed scheduled  
6 time and location to attend.

7 Q Did you have to sign in and out of those listening  
8 sessions -- the four that you testified about?

9 A Yes, we did.

10 Q What -- what did the sign-in -- sign-in and out process  
11 look like?

12 A It was partially rolled into the COVID policies and  
13 procedures, so it said that we had been temped and that we, you  
14 know, we passed whatever the COVID policy was. It wanted us to  
15 sign in with what the start time was and then the end time, I  
16 assumed for payroll purposes.

17 Q And did you do that for all four listening sessions about  
18 which you've given testimony?

19 A I don't believe they had an official sign-in -- oh, no.  
20 Yeah, we did. We did.

21 Q For all four?

22 A For all four, yes.

23 Q Michelle, in -- I think it was the last listening session  
24 that we heard -- heard a recording of there was a reference  
25 towards the end to the store getting a keypad in order to enter

1 a bathroom. Do you remember that?

2 A I do, yes.

3 Q Did that ever happen?

4 A It did.

5 Q Do you remember when?

6 A It was not by the 28th of October, which I think was the  
7 date that was stated in that recording. It might have been  
8 about a month later.

9 Q So Michelle, these listening sessions that you've been  
10 testifying about, did they have any effect on your health from  
11 what you observed?

12 A They did, yes.

13 Q What effect?

14 MS. POLITO: Objection, Judge. What's the relevance?

15 JUDGE ROSAS: I'll allow it. Overruled.

16 A At every listening session, except for the one I attended  
17 on September -- September 10th -- I received a high heart rate  
18 notification in my health app on my Apple Watch.

19 Q BY MR. HAYES: Okay. Let's -- let's just explain that.  
20 What's the health app?

21 A It's an app -- an Apple app that tracks, I guess,  
22 different -- a bunch of different things, but among them -- one  
23 of the features is that it allows it to read your heartrate and  
24 give you a reading should you need one.

25 Q Okay. And what is the alert that you just referred to?



1 A It's literally just called a high heartrate alert. And it  
2 takes place when you've sustained a high heartrate for ten  
3 minutes or more.

4 Q Do you know what counts as a high heartrate?

5 A For myself or for the app?

6 Q For yourself.

7 A For myself, anywhere over 120 would qualify as a high  
8 heartrate.

9 Q Do you know what that's based on?

10 A It's based on the information that you enter into that  
11 particular app when you download it or start it.

12 Q All right. So just tell us again, for which of the lis --  
13 listening sessions did you receive a high heartrate alert?

14 A September 19th, October 1st. And October 20th I received  
15 two.

16 Q And did the -- did you get those alerts in the middle of  
17 those meetings?

18 A I did. I did -- I mean, I felt my -- my -- I felt my  
19 watch buzz, but I didn't look at it until after I had got out  
20 of the meeting and I saw what it was for.

21 Q Okay. So the notification happened during those meetings,  
22 and you saw it later, correct?

23 A Yeah. In real-time, yes.

24 Q Outside of those meetings, how many times have you gotten  
25 a high heartrate alert?

1 A Zero.

2 Q And how long have you had the Apple Watch?

3 A Two years.

4 Q Did you experience any health effects listening to the  
5 recordings in this courtroom?

6 A I experienced the same feelings I felt when I was in those  
7 meetings.

8 Q Does that include your heartrate?

9 A Yes.

10 Q You're not wearing your Apple Watch?

11 A I am not.

12 Q Were you allowed to bring it into the courtroom?

13 A I was not.

14 Q Are you able to tell when your heart is beating faster  
15 than your normal rate?

16 A Yes.

17 MS. POLITO: Same objection, Judge, as to relevance.

18 JUDGE ROSAS: I'm going to ask you to just step outside  
19 over there. I think I have a vague idea where you're going  
20 with this, but enlighten me.

21 MR. HAYES: First of all, I'll say, Your Honor, I'm  
22 basically done. I wanted this information on the record  
23 because it goes to at least two issues that have come up since  
24 this hearing started. One of which is the playing of every  
25 single recording that every witness has made, you know, in the

1 last ten months. My contention is that evidentiary issues  
2 aside, which are very important, the -- experiencing those  
3 meetings in the first place included some kind of psychological  
4 trauma for many of the witnesses. And listening to the  
5 recordings again, especially in the charged atmosphere of a  
6 courtroom, retraumatizes or at least has the potential to  
7 retraumatize witnesses. So I -- you know, as part of the  
8 project of us trying to figure out how to handle these  
9 recordings, I need to add that as a consideration. And  
10 Michelle's here. She's able to speak to that. I wanted it on  
11 the record.

12 JUDGE ROSAS: And why is psychological trauma an issue in  
13 this case?

14 MR. HAYES: Well --

15 JUDGE ROSAS: In a -- in a -- in an unfair labor practice  
16 case?

17 MR. HAYES: I -- I'm not offering it as part of an  
18 analysis under the Act. I'm offering it on the record because  
19 of these evidence issues. I -- I know later in the proceeding  
20 witnesses might be re-called to offer just and proper evidence,  
21 in which case I would argue it might be relevant then. That --  
22 I -- that is not the purpose for offering beforehand.

23 JUDGE ROSAS: Is it the General Counsel's position that --  
24 that certain effects or mental health effects be part of  
25 consequential damages to be claimed in remedies?

1 MS. CACACCIO: So Your Honor, it could be used for that  
2 purpose, but it does go to the effect of whether these  
3 meetings, you know, were captive audience meetings, how they  
4 impacted employees, if they thought they were mandatory, how it  
5 made them feel. I mean, it certainly goes to remedy, Your  
6 Honor.

7 JUDGE ROSAS: There's no Board precedent on it yet. So  
8 I'm not going to -- I'm not going to belabor it too much, but  
9 I'll let you have it on the record, but --

10 MR. HAYES: Thank you, Your Honor.

11 JUDGE ROSAS: -- over objection. But I'm not going to go  
12 down a collateral path here.

13 MR. HAYES: Thank you, Your Honor. That was -- that  
14 wasn't my intent.

15 JUDGE ROSAS: To -- to any significant extent.

16 MS. CACACCIO: Understood.

17 MS. POLITO: And -- and Judge, if it's being allowed in  
18 the record, then -- and -- and the -- counsel to General  
19 Counsel is indicating that it goes consequential damages then  
20 I'm entitled to her medical records to explore her alleged  
21 heart condition and stress and all that other stuff. They're  
22 opening the door for all of that information, pursuant to  
23 subpoena duces tecum and testifying subpoena to serve on her.

24 MS. CACACCIO: Your Honor, rather than me, on my own,  
25 opening potentially -- even potentially opening the door to

1     that, I'd -- I'd probably have to consult the Region.  If you  
2     agree with Respondent's position?

3           MR. HAYES:  And Your Honor, I'll just -- I'll just say  
4     again that wasn't the reason.  I was, you know --

5           JUDGE ROSAS:  Well --

6           MR. HAYES:  -- going down this road, so.

7           JUDGE ROSAS:  You -- it wasn't the reason?

8           MR. HAYES:  Consequential damages were not the reason we  
9     were asking --

10          JUDGE ROSAS:  So what would be --

11          MR. HAYES:  -- the question.

12          JUDGE ROSAS:  What would be the reason?

13          MR. HAYES:  The -- the issue of how this hearing is going  
14     to be conducted over the next several months.

15          MS. POLITO:  Your Honor, if I may, that -- that has  
16     nothing to do with this witness.

17          JUDGE ROSAS:  So what you're saying is how it effects  
18     people is a consideration on how to conduct these proceedings?

19          MR. HAYES:  A consideration among many, yes.

20          JUDGE ROSAS:  Only for that purpose?

21          MR. HAYES:  Correct.

22          JUDGE ROSAS:  Okay.  Okay.  Yeah.  I mean, that's --  
23     that's what it's being offered for the purpose of.

24          MS. POLITO:  Judge, I -- I ask that her testimony -- all  
25     the testimony relating to her Apple Watch, her heart



1 condition -- all that be stricken from the record as completely  
2 irrelevant and objectionable. And it's just being put in the  
3 record to serve to bolster or claim something we're not really  
4 clear of. She did the recordings. She came in to testify to  
5 the recordings. The only way for the Respondent to know the  
6 recordings is to listen to the recordings and have the people  
7 identified. I -- I think allowing that in the record is  
8 severely prejudicial and improper and there is no relevance, as  
9 was just discussed.

10 JUDGE ROSAS: All right. I'm -- I'm going to ask -- I  
11 will certainly keep that in mind -- that's under  
12 consideration -- a motion to strike such testimony. I'm going  
13 to ask the General Counsel and Charging Party to have some  
14 discussions regarding this. The one thing I don't want is for  
15 this proceeding to delve down a process collaterally of -- as  
16 counsel indicated. If it's going to become relevant in any  
17 respect with respect to the merits of the case, it could open  
18 up to further litigation, such as you know, the subpoenaing of  
19 documents and exploration of a witness's preexisting and any  
20 current and any subsequent effects, impacts, permanent, you  
21 know, impact. So why don't you have some discussions on that,  
22 and I'll deal with that either later today or -- or by tomorrow  
23 at the latest.

24 MS. CACACCIO: Your Honor, may I be heard very briefly --

25 JUDGE ROSAS: Yeah.

1 MS. CACACCIO: -- about something Respondent said --  
2 Respondent Counsel said? They suggested that the only way for  
3 Respondent to be able to listen to these recordings and  
4 identify speakers is by playing them in their entirety in the  
5 courtroom. And we've provided numerous different ways that  
6 that could be done. You know, this isn't my first case with a  
7 recording, and I'm almost never seen it done like this.  
8 Typically, the parties are able to get together. They're able  
9 to agree to a transcript. We don't need to play these in their  
10 entirety. The -- the recordings, when they go in the record,  
11 will be in the record. And so you know, I object to -- to that  
12 particular cross.

13 JUDGE ROSAS: I can tell you 20 years of hearing this  
14 stuff, sometimes it is, sometimes it ain't. So it is what it  
15 is. All right.

16 Can I ask one of you to get some steps in? And bring back  
17 the witness? Okay.

18 MR. HAYES: Nothing further, Your Honor.

19 JUDGE ROSAS: All right. That concludes your testimony on  
20 direct examination. All right. Now, to the question of cross-  
21 examination; now or later. I considered it. I considered it  
22 briefly, and I couldn't see any -- any reason justifying the  
23 delaying of cross-examination until the Respondent's case.

24 As -- as the General Counsel has indicated, there's been  
25 no production of documentation. We have testimony from this

1 witness, aside from the audio tapes relating to her personal  
2 involvement in this campaign. Dealing with the Respondent.  
3 The Respondent's managers and supervisors and officials. And  
4 so the time is now. We will break. It is approaching 1:00.  
5 We will resume at 2:30 for cross-examination.

6 General Counsel, tender the Jencks material to the  
7 Respondent.

8 MS. CACACCIO: Your Honor, I will do that with the  
9 exception of the one affidavit that we discussed earlier, which  
10 I believe needs to be inspected in-camera.

11 MS. POLITO: Judge, I would just like to note for the  
12 record that we -- of course, the Respondent was not informed  
13 that Ms. Eisen would be testifying. And she's testified now  
14 for the better half of two-and-a-half days, either through her  
15 own oral testimony or through her audio recordings. She's  
16 referenced a number of documents, herself, that we will be  
17 seeking via a subpoena duces tecum. And for those reasons, we  
18 believe that we've stated a sufficient basis to reserve our  
19 cross-examination at a later date to be more judicious in terms  
20 of asking her questions and then reviewing the appropriate  
21 documents that she's testified to over the last two-and-a-half  
22 days.

23 Your Honor is requiring us to go forward this afternoon.  
24 We're going to ask for at least a minimum of two hours to  
25 prepare for that cross-examination over the lunch period,

1 again, in light of the two-and-a-half days of testimony we've  
2 taken so far.

3 JUDGE ROSAS: Okay. That's fine. We'll resume at 3:00  
4 then. Off the record.

5 (Off the record at 12:58 p.m.)

6 JUDGE ROSAS: On the record.

7 MS. CACACCIO: Your Honor, I'm about to approach you with  
8 an affidavit that Ms. Eisen gave to the Labor Board.

9 JUDGE ROSAS: Oh.

10 MS. CACACCIO: It's case -- it's 03-CA-295542. This  
11 affidavit is three pages in length and we're arguing that it  
12 shouldn't be producible to Respondent as that case isn't  
13 contained in this particular proceeding and that it's an  
14 investigation with the Board. And it could become a Jefferson  
15 Chemical problem to the extent it becomes an issue here.

16 JUDGE ROSAS: Okay. We're off the record.

17 (Off the record at 12:59 p.m.)

18 MS. CACACCIO: Now, I'm giving Respondent an affidavit of  
19 three pages in length. Another with case -- case number  
20 296200, an affidavit that is 20 pages in length. It's 285671.  
21 And an affidavit that is three pages in length. The case  
22 number is 293469. And I'm giving it to them now.

23 MS. POLITO: Thank you.

24 JUDGE ROSAS: You did? Good. Okay.

25 MS. CACACCIO: Your Honor, I would like to note, with

1 respect to one of the affidavits, it's the --

2 JUDGE ROSAS: Let me ask you something. Hold on. General  
3 Counsel's 32, it was an email from Bridgett Shannon (phonetic)  
4 to Alan Model. What's the date of that email?

5 MS. CACACCIO: January 14th, 2022.

6 JUDGE ROSAS: Is that an email that is referred to in  
7 paragraph 3 of this affidavit?

8 MS. CACACCIO: No, Judge. That should be a different  
9 issue, I believe. There's more than one bargaining issue,  
10 Judge.

11 JUDGE ROSAS: Okay.

12 MS. CACACCIO: This -- this complaint only contains one  
13 part, because --

14 JUDGE ROSAS: The Respondent is familiar with this charge?

15 MS. POLITO: I'm not familiar with the charge, Judge. And  
16 if they offer --

17 JUDGE ROSAS: You've given them the index, right?

18 MS. POLITO: I'm -- I'm sorry, what was it?

19 JUDGE ROSAS: You've given -- you articulated the case  
20 number, right?

21 MS. CACACCIO: Yes, Judge.

22 JUDGE ROSAS: Do you have the case number for the subject  
23 of this affidavit? They're both 03-CA-285671 and 2963469? I  
24 think there's too many --

25 MS. CACACCIO: Yeah.

1 JUDGE ROSAS: -- many letters there.

2 MS. CACACCIO: Yeah.

3 JUDGE ROSAS: Too many numbers.

4 MS. CACACCIO: Yeah. Those have been provided, Judge.

5 JUDGE ROSAS: 2 -- what's the right number there?

6 MS. STANLEY: The right number.

7 MS. CACACCIO: 293469.

8 JUDGE ROSAS: Okay.

9 MS. POLITO: Which is one is being withheld, Judge?

10 MS. CACACCIO: Neither of those.

11 JUDGE ROSAS: It -- this references those two charges --  
12 this affidavit. It's in connection with those two charges.

13 MS. POLITO: Okay.

14 MS. CACACCIO: Right. So --

15 MS. POLITO: So they're trying to withhold a fourth  
16 affidavit based on two charges, that that they're submitting  
17 another affidavit, and potentially an email that relates to the  
18 allegedly-withheld affidavit?

19 MS. CACACCIO: No, Judge.

20 JUDGE ROSAS: They -- they say it doesn't. It's not  
21 included.

22 MS. CACACCIO: Correct. So Judge, that affidavit -- if  
23 you read that, that just says that Michelle previously gave  
24 affidavits in other cases, not that it has anything to do with  
25 that one. It's just so that it skips the initial, I have

1 worked here for X years, and I did this and that. That  
2 affidavit has nothing to do with the previous one, only that  
3 Michelle has given other affidavits to the Board previously.

4 MS. POLITO: Am I entitled, Judge, to know what case  
5 number that affidavit is referring to?

6 MS. CACACCIO: I read it before I gave it to him.

7 MS. POLITO: Yeah.

8 JUDGE ROSAS: The two case numbers that -- that --

9 MS. CACACCIO: That's the one on the top, Judge. Top  
10 right, that's the one she wants to have.

11 JUDGE ROSAS: That's the case number?

12 MS. CACACCIO: Yes, Judge.

13 JUDGE ROSAS: 03-CA-295542.

14 MS. POLITO: And there's only one case number on the  
15 affidavit, Judge?

16 MS. STANLEY: Right.

17 MS. CACACCIO: Correct.

18 JUDGE ROSAS: That's correct. So I was -- I was wrong.  
19 This is the first paragraph that is referring to other  
20 affidavits that she has given.

21 MS. CACACCIO: Correct.

22 JUDGE ROSAS: That should be considered with this  
23 affidavit?

24 MS. STANLEY: Correct.

25 MS. CACACCIO: Only in that she gave those ones.

1 JUDGE ROSAS: According to what she says here?

2 MS. CACACCIO: Correct. If I might be heard briefly, just  
3 so you understand? There is a -- there is a current charge  
4 with the Board regarding meeting, whether it needs to be  
5 in-person or virtually. And that's what this affidavit is  
6 regarding, which is not subject to this proceeding. I don't  
7 even know the state of that investigation, Judge. But I can  
8 find that out.

9 MR. HAYES: It's not -- there hasn't been a merit  
10 determination. I mean, I'm saying that as the Charging Party.

11 MS. CACACCIO: Okay. Okay. So it's an active  
12 investigation, Judge.

13 JUDGE ROSAS: I see Mr. Model, Ms. Shannon are featured  
14 prominently in here. This has nothing to do with -- it has --  
15 it has everything to do with bargaining -- it's bargaining  
16 topic, and it has nothing to do at all with General Counsel 32,  
17 the only reference by this witness to any bargaining that  
18 transpired, as far as her testimony is concerned. So that's  
19 fine. This affidavit will be withheld.

20 MS. CACACCIO: Yes, Your Honor.

21 JUDGE ROSAS: Okay. All right. See everybody at 3:00.

22 MS. POLITO: Can we do 3:07, Judge?

23 JUDGE ROSAS: Well, let's -- let's -- that's fine. That's  
24 fine.

25 (Off the record at 1:07 p.m.)



1 JUDGE ROSAS: Yeah.

2 MS. POLITO: In the interim, right before you came back  
3 in, we were just handed a ad testificandum subpoena for Ms.  
4 Eisen, as well as a duces tecum subpoena for Ms. Eisen as well.  
5 Respondent -- obviously we have objection to the ad  
6 testificandum subpoena as the witness is here right now. So  
7 she shouldn't have to be subpoenaed to come back here, as she  
8 is currently here in this moment to be questioned by  
9 Respondent.

10 The duces tecum subpoena, we'll -- of course, we'll look  
11 at it. We haven't had a chance to do that, because it was just  
12 handed to us, and we'll probably be filing petition to revoke.  
13 But I can't know that until I've reviewed it. But am objection  
14 to the ad testificandum subpoena.

15 MR. HAYES: And Judge, I guess the Charging Party would  
16 join in that objection, and we plan on filing a petition to  
17 revoke as well.

18 JUDGE ROSAS: Okay. All right.

19 You're on the stand.

20 Respondent, cross?

21 **CROSS-EXAMINATION**

22 Q BY MS. POLITO: Good afternoon, Ms. Eisen.

23 A Good afternoon.

24 Q You've been working with Starbucks now for approximately  
25 11 years; is that correct?

1 A I think actually coming on 12.

2 Q And you started -- your starting salary with Starbucks was  
3 about 7.50 an hour; does that sound right?

4 A Actually, I do not remember. I think it might have been a  
5 little bit higher than that.

6 Q And are you currently making about 17.57 per hour?

7 A I believe that's correct, yes.

8 Q And the last time you got a raise was in October of last  
9 year; is that correct?

10 A I think so, yes.

11 Q And you work at the Elmwood Store; is that correct?

12 A I do.

13 Q And you work two days a week; is that correct?

14 A Current availability is Monday and Tuesday.

15 Q And your current availability is Monday and Tuesday, but  
16 in the past five weeks you've only worked about four shifts; is  
17 that correct?

18 A Yes. That's subject to scheduling.

19 Q Meaning that you can ask for other individuals to cover  
20 shifts for you; is that correct?

21 A Meaning that I wasn't scheduled for both Monday and  
22 Tuesday. But that was the store manager's scheduling, not my  
23 doing.

24 MS. CACACCIO: Your Honor, I'd ask that Ms. Polito speak  
25 into the mic because I'm -- I'm having difficulty hearing.

1 Thank you.

2 MS. POLITO: Yeah, I've got a lot going on over here, so  
3 bear with me.

4 Q BY MS. POLITO: So the past five weeks you have worked  
5 approximately four shifts though; is that correct?

6 A That -- over the past five weeks, possibly. I can't  
7 really recall right now.

8 Q You work opening shift; is that correct?

9 A Typically.

10 Q And what are those hours, 4 to 10?

11 A 4:30 would be when we would arrive and punch in. And then  
12 an opening shift can go -- anyway, a full opening shift would  
13 be 4:30 to 1 p.m., I believe.

14 Q Is that what you typically work?

15 A It's when I'm available to work. It hasn't been what I've  
16 been scheduled.

17 Q Now, when you say when it's available, that means that you  
18 have told the store manager that you are available to work two  
19 shifts a week. So the opening shift, which would typically be  
20 that time period, 4:30 to 1; is that correct?

21 A Yeah. I mean, it -- there's no set, this is an opening  
22 shift. But a typical shift would be -- if you worked a full  
23 shift, it would be eight and a half hours, which would be an  
24 eight-hour, on-the-floor shift, including a half hour lunch.

25 Q But you had indicated that it's based on your

1     availability.  So my question is, your availability right now  
2     to your store manager at the Elmwood store, that you're  
3     available for two opening shifts; is that correct?

4     A     Correct.

5     Q     Any particular days?

6           MS. CACACCIO:  Objection.  Asked and answered.

7           JUDGE ROSAS:  Basis?

8           MS. CACACCIO:  That's how this cross-examination started,  
9     Your Honor.

10          JUDGE ROSAS:  Is that different?

11          MS. POLITO:  I -- I just don't recall what her answer was.

12          JUDGE ROSAS:  Yeah.  Sustained.

13     Q     BY MS. POLITO:  And you also work for Workers United; is  
14     that correct?

15     A     Correct.

16     Q     Do you work full time for Workers United?

17     A     I do, yes.

18     Q     And full time is 40 hours a week?

19     A     Yes.  It's a salaried position, but yes.

20     Q     Do you work more than 40 hours a week?

21     A     I think it depends on the week.

22     Q     Do you have a job description for director of partner  
23     education?

24     A     Yeah.  It is partner outreach.  So I'm connected with  
25     other organizing stores across the country.  If partners have

1 questions about that process, or the process that I personally  
2 went through at the Elmwood location, I help guide them through  
3 that.

4 Q Are there other individuals that work for the Union that  
5 have the same job title?

6 A I do not know.

7 Q And when did you start working for the Union?

8 A Mid-February of 2022.

9 Q Did you change your availability at the Elmwood store once  
10 you started working full time for the Union?

11 A No. My availability change was made based on my schedule  
12 for my other job at the theater.

13 Q When is the last time you worked full time for Starbucks?

14 A Pri -- it would have been before January of 2022.

15 Q Is it fair to say that calendar year of 2021 you worked  
16 full time for Starbucks?

17 A Yes.

18 Q And how many hours a week was that?

19 A Full time per Starbucks standards is over 20 hours. So I  
20 was probably between 24 and 30 hours a week.

21 Q And even though you started working as director of partner  
22 education in 2022, you became involved with Union organizing in  
23 August of 2021; is that correct?

24 A That is correct.

25 Q And is -- isn't it a fact that those that work with you at

1 the Elmwood store are aware of your Union organizing activity?

2 A They are aware, yes.

3 Q Including your managers?

4 A Yes, they are.

5 Q And since then you haven't had any discipline as a result  
6 of your involvement in Union activities; isn't that correct?

7 A I have never had any discipline at Starbucks.

8 Q And you certainly have had any since you've been vocal  
9 about your support of the Union organizing, correct?

10 A I have not.

11 Q During your direct examination, which I know has taken  
12 place over a couple of days, so we'll bear with each other, you  
13 had indicated that you had started wearing Union pins in August  
14 of 2021. Do you remember that testimony?

15 A I do.

16 Q And no one prevented you from wearing a pin; is that  
17 correct?

18 A That is correct.

19 Q And you're aware that Starbucks has a one-pin policy? Are  
20 you aware of that?

21 A I was not aware of that at the time, but I am now.

22 JUDGE ROSAS: A what pin?

23 MS. POLITO: One-pin policy, Your Honor.

24 Q BY MS. POLITO: And you became aware of that sometime  
25 after August of 2021?

1 A That is correct.

2 Q And no one has ever told you to remove your pin; is that  
3 correct?

4 A No. That is correct. They've never told me that.

5 Q And isn't it a fact that every time you've worked since  
6 you've received your pins in, on, or about August of 2021 that  
7 you wear a pin for every shift?

8 A Just about, yes.

9 MS. CACACCIO: Just before you -- if you tip that mic  
10 down, I think it will help. Yeah. Excuse me. I'm sorry.

11 Q BY MS. POLITO: Ms. Eisen, we talked about some of the  
12 store petitions?

13 MS. POLITO: Is that okay this way?

14 MS. CACACCIO: That's much better. Thank you.

15 Q BY MS. POLITO: During your direct examination do you  
16 recall indicating that you received communications about a  
17 petition from someone named Michael Sinobria (phonetic)?

18 A I do, yes.

19 Q And how did you receive the communication about a petition  
20 from Michael Sinobria?

21 A I -- in what format? I'm sorry.

22 Q Yes.

23 A We were on a text message together, as well as an email  
24 chain.

25 Q Is the email chain your Michelle dot Renee dot Eisen at

1 Gmail dot com? Is that the email that you use for these types  
2 of messages?

3 A Yes.

4 MS. CACACCIO: Your Honor, I'm going to object to  
5 relevance.

6 JUDGE ROSAS: And this was relating to her testimony  
7 regarding the petition?

8 MS. POLITO: That's correct, Judge. And we had testimony  
9 for quite some period of time about her not only relating to  
10 the petition but the method of getting that introduced into  
11 evidence. And she testified that she was aware of them from a  
12 Michael Sinobria.

13 JUDGE ROSAS: Overruled.

14 MS. CACACCIO: Your Hon --

15 JUDGE ROSAS: You can answer.

16 A That is the email I use, yeah.

17 Q BY MS. POLITO: With respect to the Transit Commons  
18 petition that was refiled, you also received notification of  
19 that via text and email; is that correct?

20 A If we're still talking about Michael Sinobria, then yes.

21 Q Okay. And on direct examination, I think perhaps during  
22 voir dire, you indicated that you might have copies of those  
23 messages. Do you have your copies of those messages still?

24 MS. CACACCIO: Your Honor, I'm going to renew my  
25 objection. It seems as though counsel is fishing for the duces



1       tecum subpoena that they just issued to assess it.

2               MS. POLITO:   Judge, on the last --

3               JUDGE ROSAS:   It's related -- it's related to the  
4       testimony.   Overruled.

5       A       I don't know for certain.

6       Q       BY MS. POLITO:   Okay.   Do you know if you ever destroyed  
7       any messages?

8       A       If I have emptied -- or like deleted messages?   I don't --  
9       no, not deliberately.   I just --

10      Q       Okay.   With respect to the Walden & Anderson store and the  
11      second petition that you discussed in direct examination, you  
12      indicated that you were involved because you got an email from  
13      the organizing committee; is that correct?

14      A       I was on an email with members of the organizing  
15      committee, yes.

16      Q       Do you remember the names of the people on that organizing  
17      committee?

18      A       Not all of them offhand.

19      Q       Can you tell me who you recall?

20      A       I think Colin Cochran, possibly Jess Rebeck (phonetic),  
21      possibly Casey Moore (phonetic).

22      Q       Anyone else that you can recall?

23      A       Not of the top of my head, no.

24      Q       The district manager, in August of 2021, was David Buforia  
25      (phonetic); is that correct?

- 1 A That is correct, yes.
- 2 Q You only had that one district manager, true?
- 3 A In that month, or ever?
- 4 Q In that month.
- 5 A Yes.
- 6 Q And on direct examination you indicated that he was in the  
7 store frequently. Do you recall that testimony?
- 8 A I remember saying frequently after the campaign went  
9 public.
- 10 Q After August 26, '21, correct?
- 11 A Correct, yes.
- 12 Q And then we learned, after looking at a partner hub  
13 message, that you had, in fact, been told that he was no longer  
14 with the company as of September 8th; is that correct?
- 15 A Correct.
- 16 Q So how many times between August 26 and September 8th,  
17 which I think is about ten days, did you actually see him in  
18 the store?
- 19 A About half a dozen times.
- 20 Q Six times in that ten-day period?
- 21 A Correct.
- 22 Q Were you working at Starbucks during the time period?
- 23 A I was there full time at that point.
- 24 Q Full time, six days a week?
- 25 A Full time, four days a week.

1 Q And the -- the partner hub message that was publicized in  
2 September of 2021, that's the same message that you indicated  
3 was posted on the refrigerator at the Elmwood store; is that  
4 correct?

5 A Yes. Correct.

6 Q Prior to March of 2020, which is about when the pandemic  
7 started, were you ever involved in any Union organizing  
8 activity?

9 A I was not.

10 Q Was the first time you were involved in about August of  
11 2021?

12 A That is correct.

13 Q Would you agree that the pandemic impacted the way that  
14 the employees worked at Starbucks and how customers were  
15 impacted?

16 A I would agree.

17 Q And that for a period of time Starbucks as a company  
18 allowed individuals to take a leave of absence if needed?

19 A During which period of time?

20 Q During the pandemic. Early stages of the pandemic?

21 A Yes, I would agree with that.

22 Q And isn't it a fact that Starbucks didn't require their  
23 employees to return to work if they needed to take an extended  
24 leave for any reason as a result of the pandemic?

25 A I don't have an answer to that.

1 Q Okay. But you're aware of their leave of absence policy  
2 because you testified to that earlier, correct?

3 A I was aware of their leave of absence policy prior to the  
4 pandemic. I don't know if it's been adjusted.

5 Q So when you testified earlier about Jaz's request for a  
6 leave of absence which occurred this year, are you now saying  
7 that you're not familiar with the current leave of absence  
8 policy?

9 A I believe I testified that that is what I was -- that she  
10 told me she was told. But I have never seen anything in  
11 writing.

12 Q Okay. So you don't know what the actual policy is, you  
13 were just relying on what Jaz was telling you?

14 A Correct. For the current policy, yes.

15 Q So going back to the pandemic period, and when the store  
16 started to reopen, you would agree that the reopening of stores  
17 post-pandemic was slightly chaotic, correct?

18 A It was.

19 Q And particularly in New York the laws continued to change  
20 with respect to mask wearing, also with respect to COVID  
21 protocols upon entering the store, and even reopening cafes; is  
22 that correct?

23 MS. CACACCIO: Your Honor, I object. Lack of foundation,  
24 as well as compound question.

25 JUDGE ROSAS: It's a little compound. Break it down a

1 little bit.

2 Q BY MS. POLITO: You would agree that reopening the stores  
3 after the pandemic started posed some difficulties for both the  
4 staff and customers; is that correct?

5 A From my perspective, yes.

6 Q And one of those reasons was that individuals, both  
7 employees and customers, had to wear masks; is that correct?

8 A Oh, sure. Yes.

9 Q And another reason is that during the -- sometime  
10 during -- after the pandemic customers and employees had to do  
11 COVID screening to enter the store; is that correct?

12 MS. CACACCIO: Objection. Relevance.

13 JUDGE ROSAS: Overruled.

14 A Customers did not have to do COVID screening; employees  
15 did.

16 Q BY MS. POLITO: Were there periods of time, after the  
17 pandemic, where cafes were closed, yet -- and a drive thru was  
18 left open as a result of continuing laws and regulations  
19 regarding opening of cafes?

20 MS. CACACCIO: Objection. Lack of foundation. There's no  
21 testimony --

22 MS. POLITO: She --

23 MS. CACACCIO: -- whether this witness knows what the laws  
24 of New York State were during the pandemic.

25 JUDGE ROSAS: If you know. Overruled. It's cross-

1 examination.

2 A I don't know in that regards. And it doesn't have it  
3 right here, so I don't know.

4 Q BY MS. POLITO: So were there times when the cafe at  
5 Elmwood was closed as a result of the pandemic?

6 A Completely shut down?

7 Q Yeah.

8 A Is that what you're asking? Yes, we were completely shut  
9 down for a period of time.

10 Q Were there also periods of time during the pandemic that  
11 the Elmwood store prevented mobile pickups?

12 A No. That wasn't part of the policy. Actually, I think --  
13 I think we encouraged that, actually, over in-person ordering.

14 Q Okay. So you encouraged your customers at the Elmwood  
15 store to place their orders through a mobile app; is that  
16 correct?

17 A Yes.

18 Q Are you aware of any times when that ordering or that  
19 channel of ordering beverages was shut down during the  
20 pandemic?

21 A No, I'm not.

22 Q At the Elmwood store, post-pandemic --

23 MS. POLITO: Well, let me -- let me strike that.

24 Q BY MS. POLITO: Once the Elmwood store opened, after March  
25 of 2020 and up until August of 2021, was Patty Shanley your

1 store manager that entire time?

2 A She was not.

3 Q She became your store manager in or about February of  
4 2021?

5 A No. Late August of 2020.

6 Q Late August of 2020. Who was your store manager before  
7 that?

8 A Jenny Stanick.

9 Q And you testified that Patty was one of the best store  
10 managers you ever worked with; is that correct?

11 A That is correct.

12 Q So were there ongoing issues at the Elmwood store once  
13 Patty became the store manager?

14 A Can you be more specific?

15 Q Did you have any concerns about the way that the Elmwood  
16 store was operating once Patty became the store manager?

17 A I didn't have any issues with the way she was doing her  
18 job.

19 Q And then after August of 2021, you testified earlier that  
20 there were a number of listening sessions that you attended; is  
21 that correct?

22 A That is correct.

23 Q And you testified that you assumed some of those listening  
24 sessions were mandatory?

25 A That is correct.



1 Q But you have no documentation that suggests or indicates  
2 that those meetings were actually, in fact, mandatory?

3 A I don't have any documentation, no.

4 Q And in fact, you testified that you were provided a note  
5 to attend these particular sessions at a particular time, but  
6 you chose not to go to that session; is that correct?

7 A I chose not to go at that time, yes.

8 Q So if it was mandatory, what did you expect would have  
9 happened? Would you -- were you expecting to be disciplined  
10 for not showing up at the time that you were provided to  
11 attend?

12 A No, we'd been -- I did go to one of the meetings, so I  
13 didn't miss anything.

14 Q You went to a later meeting?

15 A No, I went to an earlier meeting.

16 Q So not the one that was on the note that was provided to  
17 you, correct?

18 A Correct. Yes.

19 Q The first listening session that you attended was on  
20 September 10th, 2021; is that correct?

21 A That is correct.

22 Q And as I understand, there were a number of different  
23 listening sessions between September, October, and November; is  
24 that correct?

25 A There were, yes.



1 Q Did you attend all of the listening sessions?

2 A No, I attended the one I was asked to attend for the  
3 Elmwood location.

4 Q And the recordings that have been introduced through your  
5 testimony, do you have any other recordings of any other  
6 listening sessions?

7 MS. CACACCIO: Objection. Relevance.

8 JUDGE ROSAS: Do you have any -- repeat the question.

9 Q BY MS. POLITO: Do you have recordings of any other  
10 listening sessions, other than the ones that were introduced  
11 through your testimony.

12 MS. CACACCIO: I objected to the relevance, Your Honor.

13 JUDGE ROSAS: Overruled.

14 A I do not.

15 Q BY MS. POLITO: Were you provided with recordings of other  
16 listening sessions that were held in the Buffalo market that  
17 you did not attend?

18 A I was not.

19 Q And when you went to the listening session on September  
20 10th, had you prepared some type of speech to provide to the  
21 partners that were at that session?

22 A I did not.

23 Q How many partners were at that session?

24 A I believe, including myself, seven.

25 Q All Elmwood partners?



1 A All Elmwood partners, yes.

2 Q And do you recall at that listening session that you had  
3 stated to those present -- you keep referencing the Union as a  
4 third party, but there's no party. There's no third party. Do  
5 you remember stating that?

6 A I do.

7 Q Who told you to say that?

8 A I said that on my own.

9 Q You decided to say that on your own?

10 A Correct.

11 Q Had you done research into what you should be saying?

12 A I did research into how to speak.

13 Q No, what you should be saying with respect to union  
14 organizing, prior to attending the September 9th meeting?

15 A No, I did not.

16 Q And no one provided you with notice as to what you should  
17 or should not say?

18 A No, they did not.

19 Q You also indicated that you provided Mr. Hayes with a copy  
20 of that audio recording. Do you recall that?

21 A I do.

22 Q And Mr. Hayes is, in fact, a third party, correct?

23 MS. CACACCIO: Objection. Argumentative.

24 MS. POLITO: It's cross-examination.

25 JUDGE ROSAS: You can work from there. Overruled.

1 A He is a third party, in that he does not work for  
2 Starbucks, yes.

3 Q BY MS. POLITO: Correct. You also testified that you've  
4 emailed to Mr. Bensinger a copy of an audio recording. He's  
5 also not a Starbucks partner; is that correct?

6 A That is correct.

7 Q So that would be a third party, correct?

8 A Correct.

9 Q At the 9/10 listening session, wasn't it your intent to  
10 persuade partners to vote with the Union?

11 A My intent was to let them know where I stood on the Union.

12 Q And you also told them that you had no problem having  
13 further conversations with anyone present. Do you remember  
14 stating that?

15 A I do.

16 Q You also provided talking points. Were those provided to  
17 you by the Union?

18 A They were not.

19 Q You developed those on your own?

20 A I did.

21 Q And during that initial listening session on September  
22 9th, you mentioned that there were problems with facilities,  
23 correct?

24 A On September 10th.

25 Q On September 10th. I apologize.

1 A I did, yes.

2 Q And when you mentioned that there were problems with  
3 facilities, you expected the Starbucks individuals that were  
4 there to respond, didn't you?

5 A I did.

6 Q In fact, do you recall saying to them, it's embarrassing  
7 to have to tell customers that they can't have something  
8 because the nitro machine that was just broken two days ago and  
9 worked for 12 hours is broken again, and that you need to  
10 troubleshoot the problems. Do you remember stating that?

11 A I do.

12 Q And so if the coffee machine was broken, was it your  
13 expectation that someone from facilities was going to run right  
14 over before trying to figure out if it could be resolved over  
15 the phone?

16 A I mean, that was just an analogy. That wasn't an  
17 immediate issue. But yes, that's their job, is to send  
18 somebody to fix those things.

19 Q So you think, sitting here today, that the appropriate  
20 response if a coffee machine is broken, is that a facilities  
21 person should just run right over, rather than talking to a  
22 partner to figure out if it could be resolved over the phone?

23 A If the --

24 MR. HAYES: Objection --

25 A -- job of the business is to sell coffee, then I would

1 expect it to be fixed as immediately as possible.

2 Q BY MS. POLITO: And it might be fixed, though, if someone  
3 pushed an on and off button, correct?

4 A It's not quite that simple, and it's also not within my  
5 job description to be troubleshooting facilities.

6 Q So your position as a partner at Starbucks for 11 years is  
7 that if the coffee machine is broken, your only job is to call  
8 facilities and wait for someone to come fix it; is that  
9 correct?

10 MR. HAYES: Objection, argumentative and mischaracterizes  
11 testimony.

12 JUDGE ROSAS: Sustained. You could try another question  
13 or go about it a different way.

14 Q BY MS. POLITO: So you testified that you would call  
15 facilities to -- you would expect facilities to come and fix  
16 the problem if the coffee machine was broken, correct?

17 A I did, yes.

18 Q And that you had no expectation that facility should try  
19 to have a conversation with a partner about a potential way of  
20 fixing the machine before they actually, physically came into  
21 the store?

22 MS. CACACCIO: Objection, asked and answered.

23 JUDGE ROSAS: I'll allow it. You can answer.

24 A Calling facilities to report an issue is actually the  
25 protocol of the company. There is no stated protocol that says

1 it is the partner's job to attempt to fix that issue first.

2 Q BY MS. POLITO: And that's your position as a partner of  
3 Starbucks, that if a coffee machine is broken, your sole job is  
4 to call facilities and wait for them to come and fix it?

5 A And report the issue, yes.

6 Q And you have no obligation to try to troubleshoot it  
7 before facilities comes out?

8 A I do not.

9 Q The example that you provided in the 9/10 listening  
10 session about the nitro machine being broken was post-pandemic;  
11 is that correct?

12 MS. CACACCIO: Your Honor, I'm going to object to the  
13 vagueness of during the pandemic, post-pandemic. I mean, we're  
14 still in the pandemic. So if there's a date range or  
15 something, I think it would be --

16 JUDGE ROSAS: Sustained, rephrase it.

17 Q BY MS. POLITO: So I'll rephrase that. So -- and what I'm  
18 referring to is when the store started to open after the world  
19 was shut down in March of 2020. The store started to open. I  
20 asked you earlier that there -- that was a chaotic period of  
21 time; is that correct?

22 A Correct. Yes, it was.

23 Q And during the example that you've given at the 9/10  
24 listening session about the nitro machine being broken, that  
25 was an example given after the stores were open sometime in

1 2020; is that correct?

2 A Yes. We had those issues prior to that, as well, but yes.

3 Q And when you had those issues prior to March of 2020, who  
4 did you share those concerns with or issues with?

5 A I'm sure there is a list of facilities calls that were  
6 made prior to March of 2020 relating to the same issue.

7 Q How many times do you remember calling facilities about  
8 the particular issue, prior to March of 2020?

9 A As a barista, I don't have to make those phone calls.  
10 Those are the shift supervisors or the store managers.

11 Q So your job is to just let them know something's not  
12 working?

13 A Correct.

14 Q From when the stores reopened in 2020 until the present,  
15 have you only worked at the Elmwood store?

16 A I have, yes.

17 Q And typically speaking, how many employees are working  
18 during the opening shift at the Elmwood store?

19 A That's changed a bit. It could be anywhere from one shift  
20 supervisor to one barista to one shift supervisor and three  
21 baristas, depending on the morning.

22 Q Is it accurate to state that there has to be a minimum of  
23 two people to open it?

24 A That is accurate, yes.

25 Q Is there a time period in which the third person needs to



1 be present to keep the store open?

2 A That also fluctuates. I don't know what they base that  
3 off of. Sometimes, the person is in at open, as opposed to  
4 prior to open. Sometimes, it's not until 7 a.m.

5 Q And the times that you've worked at the Elmwood store  
6 since the reopening in 2020 until the present, it's always been  
7 during that opening shift; is that correct?

8 A Sometimes, I'm in at 6:30. Sometimes, I'm in at 7 a.m. I  
9 don't think I'm ever in later than 7 a.m.

10 Q Are you always one of the two people to open the store  
11 during the time you work?

12 A I am not always one of the two people, no.

13 Q Do you typically have the same team members that you work  
14 with?

15 A Yes. I'd say it is a fairly small group, but yes.

16 Q And who are the team members that you typically work with?

17 A The shift supervisors I typically open with --

18 MS. CACACCIO: Your Honor, I'm going to object to vague,  
19 as to when.

20 MS. POLITO: I'm talking --

21 MS. CACACCIO: I mean, she's talked about --

22 JUDGE ROSAS: What time?

23 MS. POLITO: I'm talking about the same time period that  
24 we're talking about, since the reopening of the store some time  
25 in 2020 until the present.



1 MS. CACACCIO: Your Honor, that's -- that time span is --  
2 on direct examination, she testified about how that changed, so  
3 that's --

4 JUDGE ROSAS: If you can. If you can.

5 A I can't --

6 JUDGE ROSAS: Overruled.

7 A -- give you everything for the last two years. But I  
8 often open with Emily Hirsch and Jeremy Pasquale. Those would  
9 be the two shift supervisors I open with the most often. As  
10 far as baristas, that's going to fluctuate widely in the last  
11 two years.

12 Q Are there any baristas that you've consistently worked  
13 with during the past year?

14 A Yes.

15 Q And who are they?

16 A Angela Dudzik, August Code, Alyssa Warrior --

17 JUDGE ROSAS: Spell the second one?

18 A August, A-U-G-U-S-T, and Code is C-O-D-E. There are  
19 probably a lot more than that. That's a handful of them.

20 Q BY MS. POLITO: Thank you. Going back to the September  
21 10th listening session, what made you decide to record the  
22 session?

23 A I wanted to be sure that I knew what was being said, and  
24 that I didn't --

25 MS. CACACCIO: Your Honor, asked and answered. This

1       happened during the voir dire. And I objected to that, and you  
2       said it was essentially an extended cross-examination.

3           JUDGE ROSAS: Hold on. Is this 26(a)?

4           MS. POLITO: Yes, it is, Your Honor.

5           JUDGE ROSAS: I don't have a note on that, to the extent  
6       to which it was voir dired. I'll allow it. You can answer if  
7       you can.

8       A     I anticipated a lot of information being shared, and I  
9       wanted to make sure I didn't miss anything that I could review  
10      if I needed to.

11      Q     BY MS. POLITO: So it's your testimony that no one told  
12      you to record it. You made that decision on your own; is that  
13      correct?

14      A     That is correct.

15      Q     Who told you to email the recording to Mr. Bensinger?

16      A     I asked if anyone would want to hear it. I didn't  
17      actually know Mr. Bensinger until the next day.

18      Q     Who did you ask that question to?

19      A     I asked it to him.

20      Q     You asked it to Mr. Bensinger?

21      A     I did.

22           MR. HAYES: Objection, relevance.

23           JUDGE ROSAS: All right. The answer can remain, but let's  
24      see -- does it need to go beyond that? Because I'm not seeing  
25      the relevance of this line.

1 MS. POLITO: The relevance relates to why she's recording  
2 a conversation by -- a listening session and providing it to  
3 someone by the name of Mr. Bensinger. And she testified to it  
4 earlier. I'm entitled to ask her about that in cross-  
5 examination.

6 MS. CACACCIO: Your Honor, could I interrupt?

7 JUDGE ROSAS: Go ahead.

8 MS. CACACCIO: Just because the witness talked about it --  
9 that was the subject of the voir dire at that time, as well.  
10 That's how this appeared in the first place. Just because  
11 Respondent opened its own door to something that I objected to  
12 at the time as nonrelevant, doesn't make it relevant now. The  
13 recording --

14 JUDGE ROSAS: So establishing facts is one thing, and  
15 pursuing those facts to some extent is -- is fine. However,  
16 when you're asking why, I don't understand why we need to know  
17 why, from the standpoint of this witness. We need to  
18 establish, in this case, what transpired, right? With respect  
19 to the relevant material facts.

20 MS. POLITO: That's exactly what I'm trying to do, Your  
21 Honor. She testified that she emailed this particular  
22 recording to an individual. Are you saying that I can't ask  
23 her why she did that?

24 JUDGE ROSAS: So does this have --

25 MS. POLITO: Or who gave her direction to do that?

1 JUDGE ROSAS: Does this have something to do with  
2 contesting the authenticity of the evidence?

3 MS. POLITO: Yes, and why -- and again, why it was done.  
4 Why it was emailed. And then, what happened to the audio  
5 recording? So it certainly is -- it's both, Your Honor.

6 JUDGE ROSAS: I'm not --

7 MR. HAYES: Your Honor, if I may. I think we already  
8 covered the authenticity issue. The witness testified for each  
9 recording that what she heard and what the exhibit is, is the  
10 same thing she recorded. That jumps over any chain of custody  
11 and related issues.

12 JUDGE ROSAS: I'm going to sustain any questioning as to  
13 why this witness --

14 MS. POLITO: Emailed it to Mr. Bensinger?

15 JUDGE ROSAS: At least with respect to the audio tapes,  
16 okay? But on the question of why, let's just leave it at that.  
17 I'll sustain anything beyond that.

18 Q BY MS. POLITO: Do you know where the recordings are  
19 currently stored?

20 MS. CACACCIO: Objection, relevance.

21 JUDGE ROSAS: I'll allow that.

22 A I mean, I have the originals on my phone.

23 Q BY MS. POLITO: Ms. Eisen, during the 9/10 listening  
24 session, did you share with the group that the pandemic  
25 exacerbated the entire situation? It was like a frog in a pot

1 of boiling water for the last five years? Do you recall saying  
2 that?

3 MS. CACACCIO: Your Honor, I'm going to object as to form.  
4 If she's reading from the transcript, Ms. Eisen should be  
5 allowed to look at it.

6 JUDGE ROSAS: You said five years?

7 MS. POLITO: She hasn't testified that she doesn't recall  
8 stating it yet. So I can impeach her if you want me to, but  
9 I'm asking her initially if she recalls stating something --

10 JUDGE ROSAS: Okay.

11 MS. POLITO: -- at the 9/10 listening session.

12 JUDGE ROSAS: Okay, all right.

13 A I don't think --

14 JUDGE ROSAS: I --

15 A -- that was the entirety of the sentence, because the five  
16 years would have gone prior to the pandemic.

17 Q BY MS. POLITO: But you recall saying something to that  
18 effect.

19 MS. CACACCIO: Your Honor, this is --

20 Q BY MS. POLITO: Is that correct?

21 MS. CACACCIO: This is the problem. I object to that,  
22 based off -- she's reading something to the witness. The  
23 witness should be allowed to look at it. Particularly, given  
24 that it's -- the recording is less than 9 minutes.

25 JUDGE ROSAS: Well, I'll let you take your crack at what

1     you believe she said verbatim, and we'll see what the witness  
2     recalls or not.

3     Q     BY MS. POLITO: Do you recall saying that the pandemic  
4     exacerbated the entire situation?

5     A     The -- I remember saying that the -- yes.

6     Q     Thank you. And at the end of the 9/10 listening session,  
7     there was some discussion as you were walking out of the  
8     session. Do you recall generally engaging in discussions with  
9     people as you were leaving?

10    A     I do, yes.

11    Q     And do you remember stating that your understanding is  
12    that their legal is staying here, and they want them close to  
13    the airport, so they didn't actually give you guys truthful  
14    information when it came to that? Do you remember stating  
15    that?

16    A     I do, yes.

17    Q     Where did you get that information from?

18    A     I overheard somebody talking in our lobby while I was  
19    working.

20    Q     You overheard a Starbucks executive or a corporate person  
21    talking?

22    A     Yes.

23    Q     Who?

24    A     I don't know who it was. At that point, I didn't know who  
25    anybody was.

1 Q Do you now know who that person was that was speaking?

2 A I don't.

3 Q The next listening session you attended was on September  
4 19th; is that correct?

5 A That is correct.

6 Q And you also recorded that session as we have discussed,  
7 correct?

8 A Correct.

9 Q And you have the original of that session --

10 A I do.

11 Q -- still, correct?

12 A Yes.

13 Q And in that session, do you remember saying to your fellow  
14 partners, "our union or hope-to-be-union is fighting to  
15 unionize on an individual store basis". Do you remember  
16 stating that?

17 A I do.

18 Q And isn't it true that you wanted to be sure that each  
19 store could vote to unionize independent of other stores,  
20 correct?

21 A That is correct.

22 Q And was that your opinion, or were you expressing the  
23 opinion on behalf of the union at that time?

24 A That was my opinion.

25 Q You were not employed by the Union at that time, correct?

1 A I was not.

2 Q You were not paid by the Union at that time; is that  
3 correct?

4 A I was not.

5 Q You also stated in that listening session that it is very  
6 dependent on who your store manager is. Do you remember  
7 stating that?

8 A I do.

9 Q And your store manager at the time was one of the best you  
10 ever had; is that correct?

11 A That is correct.

12 Q During that 9/19 listening session, you explained  
13 bargaining rights to the individuals that were there. Do you  
14 remember doing that?

15 A I do.

16 Q And where did you learn what the bargaining rights were to  
17 be able to explain to the partners?

18 A I did my own research when I decided to do this.

19 Q No one gave you that information?

20 A I did not.

21 Q During that session, in fact, you went as far to tell your  
22 fellow partners what to expect for payment of dues, correct?

23 A Yes, correct.

24 Q And you even said that they could expect to pay \$5 to \$10  
25 per hour. Do you remember stating that?



1 A I do.

2 Q Where did you get that information?

3 A When this was presented as an option to me, I asked the  
4 question, as to what the dues would be. And that's what I was  
5 told.

6 Q You asked the question of who?

7 MR. HAYES: Objection, relevance.

8 MS. CACACCIO: Objection. Right.

9 JUDGE ROSAS: Hold on.

10 MS. POLITO: It's completely relevant. They've introduced  
11 these listening sessions into evidence. I have every right to  
12 ask every question relating to the listening sessions that  
13 they've introduced into evidence.

14 JUDGE ROSAS: This is what she said, right? You've asked  
15 her what she said, and she gave you an answer, right?

16 MS. POLITO: Yes, and then I asked her -- can you read --

17 JUDGE ROSAS: No.

18 MS. POLITO: -- the ability to read the last question?

19 JUDGE ROSAS: No, no. We don't have to do that. The  
20 question is, taking it from there, finding out the source of  
21 her information. She told you.

22 MS. POLITO: She said, I asked the question. My follow-up  
23 is, who did you ask the question from?

24 MS. CACACCIO: Your --

25 MS. POLITO: That's when I got the objections.

1 JUDGE ROSAS: Correct.

2 MS. CACACCIO: Your Honor, if I might be heard? Who the  
3 witness' source is for this information isn't relevant. What's  
4 relevant is the -- what Respondent has said during that  
5 meeting. Ms. Eisen's not on trial here, so where she gets her  
6 own information and where -- how she presents it isn't  
7 relevant. And to the extent that this is trying to go into how  
8 their organizing is set up, it's improper.

9 MS. POLITO: Judge, it's directly relevant to Ms. Eisener  
10 (sic) attending all these listening sessions where she's asking  
11 Starbucks executives specific things, making specific  
12 representations, all to entice and solicit certain responses.

13 MR. HAYES: Your Honor, if I may. I just have to agree  
14 that's not relevant to the merits of the complaint.

15 JUDGE ROSAS: Well, it's outside the scope of the direct  
16 examination. Let's keep it tight. What she said, what she  
17 didn't say.

18 MS. POLITO: So she's not allowed to --

19 JUDGE ROSAS: Correct.

20 MS. POLITO: -- answer the question --

21 JUDGE ROSAS: Correct.

22 MS. POLITO: -- of who she asked?

23 JUDGE ROSAS: Correct. Not based on that.

24 MS. CACACCIO: And just for clarity, her last name's  
25 Eisen, with an N, not an R.

1 Q BY MS. POLITO: I apologize, Ms. Eisen.

2 During the 9/11 listening session, you were making  
3 inquiries of Starbucks with relation -- in relation to fixing a  
4 variety of facility issues, do you recall that?

5 MS. CACACCIO: I'm going to object. This listening  
6 session's not in evidence. The date is the 10th, which she  
7 already testified to, at that.

8 JUDGE ROSAS: You're right.

9 MS. POLITO: September 19th. My apologies.

10 A I'm sorry, could you repeat that question?

11 Q BY MS. POLITO: Sure. At the September 19th listening  
12 session, you asked a number of questions relating to  
13 facilities. Do you recall that?

14 A I do, yes.

15 Q And isn't it true that you expected Starbucks to respond  
16 to the concerns you raised regarding facility issues?

17 A By Starbucks, do you mean the people in the room with me?

18 Q That's correct.

19 A I expected to have a conversation about them, yes.

20 Q And then you expected a follow-up response from Starbucks,  
21 with respect to the concerns raised relating to facilities,  
22 correct?

23 A I was not expecting a follow-up.

24 Q Okay. So why were you raising it, then?

25 A Because those were the questions that were being asked of

1 us. They were asking us what the issues were, so I was  
2 responding in turn.

3 Q Pest control was one of the issues; is that correct?

4 A Correct.

5 Q Did the Elmwood store have issues with bees?

6 A We had issues with bees outside of our store, yes.

7 Q Were those issues ever resolved?

8 A They were not, to the best of my knowledge, resolved by  
9 facilities. They were resolved by a change in weather.

10 Q And so is it a season -- continued seasonal issue with the  
11 bees?

12 A It's a seasonal issue, yes.

13 Q Do you remember during the September 19th listening  
14 session, telling the partners who were there, in terms of if a  
15 store becomes unionized, then anyone within that store would be  
16 part of that union by default. Do you remember stating that?

17 A I do.

18 Q The next listening session that you attended was on  
19 October 1st; is that correct?

20 A That is correct.

21 Q Didn't you actually request certain benefits at that  
22 meeting?

23 A I did not request certain benefits. I asked to have an  
24 explanation as to why benefits had been adjusted.

25 Q And you expected Starbucks to respond to you when you

1 asked that question, correct?

2 A I was asking a question that had been asked by 100  
3 partners that week. I was just reiterating it.

4 Q How did you know that 100 other partners asked those  
5 questions?

6 A Because those were on the partner Hub, which I think was  
7 mentioned at the recording at that meeting, as well.

8 Q Any other knowledge, other than utilizing the partner Hub?

9 A The partners in my store had also asked those questions.

10 Q And what are the benefits you had asked about?  
11 Specifically with Spotify, do you remember that?

12 A I asked for an explanation of Spotify, yes.

13 Q Not only did you ask for an explanation -- didn't you, in  
14 fact, ask Mr. Stewart if he had escalated the problem? Do you  
15 remember that?

16 A No.

17 Q That was not part of the Spotify question?

18 A It was not.

19 Q What did you ask him to escalate?

20 A I asked if the issue of the partner beverage and food mark  
21 out being changed had been escalated.

22 Q And you had indicated to the Starbucks individuals present  
23 at the October 1st listening session that you were not happy  
24 that the food benefit, which had been implemented when the  
25 stores reopened after the pandemic -- well, we're still in the

1 pandemic. But when the stores reopened some time after March  
2 of 2020, that that food benefit has now changed; is that  
3 correct?

4 A That is correct, yes.

5 Q And you expected Mr. Stewart to respond, correct?

6 A Yes.

7 Q And isn't it true that you are -- you, at the 10/1  
8 meeting, raise the issue of seniority pay. Isn't that correct?

9 A I believe I did, yes.

10 Q Were you aware that in some time in 2020, through the  
11 partner Hub, the company had informed all partners nationwide  
12 that they were working on a nationwide pay increase?

13 A I was not aware of that. And if I was, it certainly  
14 wasn't indicated that it was seniority based.

15 Q So you might have been aware of a pay increase some time  
16 in 2020, but you don't recall that being times were --  
17 seniority-based pay.

18 MS. CACACCIO: Your Honor, I'm going to object to --

19 JUDGE ROSAS: Correct. So you're going to have to cut  
20 back on these questions that are being re-asked in a slightly  
21 different format. I'll allow that one to be answered.

22 MS. CACACCIO: But if --

23 JUDGE ROSAS: Go ahead. Do you recall that?

24 MS. CACACCIO: Your Honor, if I just for a second --

25 I think that you meant 2021, but if you didn't, then

1     that's fine.

2           JUDGE ROSAS:  Is that a different year?

3           MS. CACACCIO:  She said 2020.

4           JUDGE ROSAS:  2021?

5           MS. POLITO:  It's my understanding that the witness was  
6     asked by the Court that if she could answer my question, she  
7     could.  If she can't answer it, I'll re-ask another question.

8           JUDGE ROSAS:  Do you recall the question?

9     A     Could you just rephrase -- could you just say the question  
10    again, please?

11    Q     BY MS. POLITO:  Were you aware, in 2020, that through the  
12    partner Hub, the company had provided an announcement about  
13    nationwide pay increases?

14    A     I have no recollection of that in -- from 2020.

15    Q     When you raised the issue of seniority pay at the October  
16    1st, 2021 meeting, you expected the corporate executives to  
17    respond; is that correct?

18    A     If I'm remembering correctly, that came off of a pay  
19    question that Myke Gollwitzer actually stated.  I was just  
20    following up on what he said.  That wasn't directed at any  
21    member of corporate.

22    Q     Are you stating that Myke was at the 10/1 session with  
23    you?

24    A     He was, yes.

25    Q     No one at Starbucks mentioned seniority pay before that

1 question was raised, either by Myke or yourself, at the October  
2 21st, 2021 meeting, correct?

3 A Not to the best of my knowledge, no.

4 Q And again, you and/or Myke wanted the company to respond  
5 to that request, correct?

6 A You mean that conversation between three partners? That  
7 was myself, Myke, and LaRue. At no point, do I remember  
8 looping one of the corporate members into that conversation.

9 Q You asked them about seniority pay. And I told her first,  
10 since that was a mixed session, correct?

11 A I do not remember asking anyone directly about that.

12 Q And you testified earlier that you don't recall receiving  
13 any seniority-based pay since October 1st, 2021; is that  
14 correct?

15 A I don't recall. I don't even know the last time I looked  
16 at a pay stub. But I don't recall, no.

17 Q Is that because you're getting paid full time working for  
18 the Union?

19 A That's because our pay stubs are electronically, and need  
20 to be pulled up from a backroom computer. And so unless I have  
21 any reason to go there and do that, I don't look at them on the  
22 regular.

23 Q So then, as you sit here today, you don't know if you've  
24 actually gotten a raise or not?

25 A I know that there was one announced in October of 2021,



1     that -- I know there was one that went into effect in October  
2     of 2021 that was announced in July of 2021. I assume I  
3     received that one.

4     Q     Do you recall during the October 1st, 2021 meeting asking  
5     just Starbucks individuals that were present to provided  
6     answers relating to the various questions that had been  
7     proposed so far?

8     A     There were members stating that no answers had been  
9     provided as of yet.

10    Q     Did that mean you wanted an answer, or did you not want an  
11    answer?

12    A     It was just an observation that no answers had been  
13    provided as of yet.

14    Q     So you didn't expect them to respond to that?

15           MS. CACACCIO: Objection. Asked and answered.

16           JUDGE ROSAS: Counsel, I'm going to sustain any -- any  
17    further, this -- this question, as well as any other questions  
18    relating to this witness' expectations at any given time, which  
19    is not evidence. If you want to establish a defense to some  
20    alleged promise or benefit, establish what was said at any  
21    given time, and what was done before, what was done after. But  
22    let's -- let's move on from this witness' expectations. You're  
23    spending too much time on that. It's not relevant to me.

24    Q     BY MS. POLITO: On October 1st, 2021, at the listening  
25    session, were you expecting a response from the Starbucks

1 individuals with respect to a variety of benefits and promises?

2 MS. CACACCIO: Objection. Asked and answered.

3 JUDGE ROSAS: Sustained.

4 MS. POLITO: For the record, Judge, I would just note that  
5 I think it's relevant to whether or not the witness is asking  
6 executives specific questions, and then, later filing charges  
7 about allegations of benefits, when they're -- she's there  
8 asking for those minutes and recording conversations about  
9 those allegations.

10 MS. CACACCIO: Your Honor?

11 JUDGE ROSAS: Yes?

12 MS. POLITO: Can I be heard?

13 JUDGE ROSAS: Absolutely. Ask her what she said. What  
14 she didn't say is fine.

15 MS. CACACCIO: This witness hasn't filed charges. And to  
16 state that she has in this, it's --

17 MS. POLITO: I do think --

18 JUDGE ROSAS: I -- I -- I've issued my ruling. I'm not  
19 getting into any other -- any other discussions. I know what  
20 the law is.

21 Q BY MS. POLITO: Your next listening session was on October  
22 20th, 2021; is that correct?

23 A That is correct.

24 Q And in that session, do you remember indicating or stating  
25 that Starbucks was engaging in scare tactics?

1 A I do. Yes.

2 Q Do you also remember in that session stating that partners  
3 could be prosecuted by Starbucks?

4 A I do. Yes.

5 Q You're not aware of anyone ever being prosecuted by  
6 Starbucks though, correct?

7 A I am not.

8 Q Would you agree that that statement might be a scare  
9 tactic?

10 MS. CACACCIO: Objection. Argumentative.

11 MS. POLITO: It's cross-examination.

12 JUDGE ROSAS: I'm sorry. What -- repeat the question.

13 What's a scare tactic?

14 MS. POLITO: Her stating in the meeting that partners  
15 could be prosecuted by Starbucks, and then, testifying that  
16 she's not aware of anyone that was prosecuted, when she's at  
17 the same meeting alleging that Starbucks was engaging in scare  
18 tactics.

19 JUDGE ROSAS: I don't know the connection between the two.  
20 Try rephrasing it, so I can understand what you're asking.

21 Q BY MS. POLITO: My question was, whether or not stating  
22 that Starbucks partners could be prosecuted was a means of  
23 scare tactics for the fellow partners that were there?

24 A I don't believe so, no.

25 Q At the October 20th listening session, you again asked

1 Starbucks em -- employees that were present about additional  
2 pay. Do you recall that?

3 A I do not.

4 Q Do you recall asking questions to follow up with respect  
5 to Myke's prior questions regarding pay?

6 A It was not a follow-up regarding pay. It was a follow-up  
7 regarding how pay was calculated.

8 Q With respect to the cost of living and the inflation rate  
9 versus the pay increase; is that correct?

10 A I do. Yes.

11 Q And do you recall asking the Starbucks individuals that  
12 were present that question, correct?

13 A I do. Yes.

14 Q You expected them to respond, correct?

15 MR. HAYES: Objection. Relevance.

16 JUDGE ROSAS: Sustained.

17 Q BY MS. POLITO: Your final listening -- well, it's titled  
18 "Listening Session", but your -- I'll refer to it as a  
19 listening session, you attempted to attend a listening session  
20 on November 8th, 2021; is that correct?

21 A That is correct.

22 Q And that's the one where you got a letter asking you to go  
23 to a specific time; is that correct?

24 A Yes, correct, as well.

25 Q And you assumed it was mandatory, but you went to a

1 different time; is that correct?

2 A It -- I tried to go an earlier time slot, yes.

3 Q It was located at the Elmwood store, correct?

4 A It was.

5 Q And you don't know for a fact what time the store was  
6 closed that day; is that correct?

7 A I do actually. I was standing outside of it when it  
8 closed.

9 Q Waiting for the session?

10 A Having coffee with a friend down the street, but also  
11 waiting for the session, yes.

12 Q And you weren't allowed to attend that session; is that  
13 correct?

14 A I was not allowed to, no.

15 Q And that bothered you; is that correct?

16 A It did. Yes.

17 Q And -- and isn't it a fact that you could've attended the  
18 later meeting, but you chose not to? And you stated to your  
19 colleague, I can't come to this later meeting, because I just  
20 told them I was not able to attend this later meeting.

21 MS. CACACCIO: I'm going to object. Vague and compound.

22 JUDGE ROSAS: Overruled. You can answer.

23 A Yes. I told them I was unable to attend the later  
24 meeting, because I had to open the next day.

25 Q BY MS. POLITO: But you could, in fact, attend?

1 A Not and get up at 4:00 the next morning, I could not have,  
2 no.

3 Q Other than -- but there was nothing preventing you from  
4 attending?

5 A The seven-hour turnaround time was preventing me from  
6 attending.

7 Q What seven-hour turnaround time, the New York State law?

8 A Between the end of the meeting, which was slated to go  
9 until 9 p.m., and when my alarm was going to go off at 4 a.m.,  
10 is a seven-hour turnaround time.

11 Q Correct. And that's the New York law you were referring  
12 to on the --

13 A That's the one.

14 Q -- video recording?

15 A Um-hum. I was later corrected that that law,  
16 unfortunately, does not exist. It is however a violation of  
17 company policy.

18 Q So the law that you were referring to in the audio  
19 recording, you've now learned, or discovered, does not exist?

20 A Not -- I believe it exists within New York City, but not  
21 within the broader New York State.

22 Q And do you recall stating on your audio recording to  
23 Cassie, we gave them all the talk -- talking points, so  
24 hopefully it's okay?

25 A I do. Yes.

1 Q Who -- and who did you give the talking points to?

2 A Any partner who was nervous about attending that meeting.

3 Q And how did you provide the talking points?

4 A They asked. And I said, you know, if they talk about  
5 this, then you can say this.

6 Q Do you provide that to them verbally or via the group  
7 chat?

8 MR. HAYES: Objection.

9 A The --

10 MR. HAYES: I have an objection to relevance, this whole  
11 line.

12 JUDGE ROSAS: What's the relevance?

13 MS. POLITO: It's relevant, because they submitted an  
14 audio recording with her testimony regarding this particular  
15 meeting. And I'm entitled to ask her questions about the audio  
16 recordings, what she instructed people to say, and whether or  
17 not there's this effort or attempt to get a Starbucks person to  
18 solicit them to say something in response. Same relevance that  
19 I've been on, Judge.

20 JUDGE ROSAS: So her discussion with other individuals  
21 about -- about talking about -- what were they referred to,  
22 talking points?

23 MS. POLITO: Yes.

24 JUDGE ROSAS: Talking --

25 MS. POLITO: Your Honor, she said that she gave them the

1 talking points, so hopefully it's okay.

2 JUDGE ROSAS: Talking points? No, I'm going to sustain  
3 that. That's -- again, what -- what the tape says, the tape  
4 says. You know, you want to address it un -- under some other  
5 circumstances, if it's relevant, go ahead. But it's not  
6 relevant to the direct examination.

7 MS. POLITO: So then, Judge, I -- I'd like to reserve my  
8 rights to request a redaction of all portions of the audio  
9 recordings that are not relevant, and for which counsel has  
10 raised objections relating to relevance. And --

11 MR. HAYES: Your Honor, I --

12 MS. POLITO: -- we could do that via motion.

13 MR. HAYES: Your Honor, if I may? I -- the objection is  
14 to the questions as not relevant to the testimony. That --  
15 that has nothing to do with the contents of the transcript or  
16 the recording.

17 JUDGE ROSAS: Anything else?

18 MS. POLITO: Yeah. Judge, they submitted the audio  
19 recordings through this witness as her testimony. So it's  
20 directly relevant to her testimony what --

21 JUDGE ROSAS: Right.

22 MS. POLITO: -- she stated at these meetings.

23 MS. CACACCIO: Your Honor, if I might be heard? I -- we  
24 didn't submit the recordings as her testimony. We submitted  
25 the recordings as the recordings she made of those meetings,



1     which I think is an important distinction. But moreover, you  
2     know, the -- whether she talked to other witnesses or not, Ms.  
3     Eisen didn't hold these meetings. So I don't -- I don't -- I  
4     also object to relevance, in the same way the Union is.

5             JUDGE ROSAS: The -- the --

6             MS. POLITO: But -- but Judge, she might have not held the  
7     meetings, but she's directing the content of the meetings by  
8     asking specific questions and trying to solicit information  
9     from the individuals there. It is directly relevant to this  
10    entire case.

11            MS. CACACCIO: If I might be heard? For this particular  
12    line of questioning, we're talking about a meeting she didn't  
13    even attend. So the extent, you know, Respondent's counsel  
14    wants to ask other witnesses who were in that meeting what  
15    happened in that meeting, she's welcome to do so. But this  
16    witness didn't attend it, so she can't know what was or wasn't  
17    said in that meeting.

18            MS. POLITO: And I -- again, I'd ask what the purpose of  
19    the audio recording was in the first place?

20            MS. CACACCIO: If I might be heard?

21            JUDGE ROSAS: No. We're done. The objection -- the  
22    objection is sustained. Again, the evidence here is the audio  
23    tape.

24    Q     BY MS. POLITO: The last audio recording you testified  
25    about during your direct examination was from March 9th, 2022;

1 is that correct?

2 A That is correct.

3 Q And that's when you attended a meeting with Cassie with  
4 respect to her availability; is that correct?

5 A That is correct.

6 Q And you were aware before you attended that meeting that  
7 it was a disciplinary meeting, correct?

8 A I was not, no.

9 Q Do you remember telling her, you are not leaving  
10 voluntarily. They have to fire you. Do you remember telling  
11 her that?

12 A I do. Yes.

13 Q But you didn't think it was a disciplinary meeting?

14 A I did not know what the meeting was going to entail.

15 Q Do you remember also telling her, stick to what you were  
16 going to say?

17 A I do. Yes.

18 Q Isn't it true that you wanted her fired?

19 A Absolutely not.

20 Q Is -- is Cassie Fleischer still employed by Starbucks?

21 A She is not.

22 Q Turning to the training site. You testified during direct  
23 examination that employees for a period of time were trained at  
24 a single store. Do you recall that?

25 A Can you give me a time frame?

1 Q In the fall of 2021.

2 A Yes. Correct.

3 Q And since the fall of 2021, the Buffalo market has  
4 continued to train individuals at stores that might not be  
5 their home store; is that correct?

6 A That is correct. Yes.

7 Q And in fact, some of those stores are unionized stores; is  
8 that correct?

9 A I'm sorry, which stores are unionized stores?

10 Q Genesee Street.

11 A I'm not understanding what you're asking me. What stores  
12 are unionized stores?

13 Q Let me step back. You testified on direct examination  
14 that in the fall of 2021 Starbucks had Buffalo market-wide  
15 training at a single site; is that correct?

16 A That is correct. Yes.

17 Q Since the fall of 2021, the Buffalo market continues to do  
18 training at a -- not a single store site, but at -- market  
19 training at a store where the partner might not be employed; is  
20 that correct?

21 A That is correct. Yes.

22 Q And some of those stores where the trainings are held are,  
23 in fact, union -- unionized stores; isn't that correct?

24 A At the -- I know that I was aware of it. At the time, no,  
25 I did not know that.

1 Q So currently, are you aware that Genesee Street is a  
2 unionized store?

3 A I'm aware that Genesee is unionized. I was not aware that  
4 it was a training store.

5 Q What about East Robinson, are you aware that that's a  
6 unionized store?

7 A When that became the training store, it was not a  
8 unionized store. But I'm aware that it is a unionized store  
9 now. But I believe it is still awaiting certification.

10 Q And are you aware that Starbucks still uses that store for  
11 training for its partners to be placed throughout Buffalo  
12 market, correct?

13 A I was not aware of that, no.

14 Q Are you aware whether or not a GoFundMe page has been set  
15 up for any of the individuals that are no longer employed by  
16 Starbucks?

17 MR. HAYES: Objection.

18 MS. CACACCIO: Objection.

19 MR. HAYES: Relevance.

20 MS. CACACCIO: Relevance.

21 JUDGE ROSAS: What's the relevance?

22 MS. POLITO: It -- it's -- she's testified to a number of  
23 individuals that are discriminatees in this case. And it's  
24 directly relevant to the potential wage claim, whether or not  
25 they received payment after they were let go from Starbucks,

1 through a GoFundMe page.

2 JUDGE ROSAS: Should --

3 MS. CACACCIO: Your Honor?

4 JUDGE ROSAS: Should the case go that far, maybe -- maybe  
5 it would be relevant. We're not dealing with any of that now.  
6 Sustained.

7 Q BY MS. POLITO: Earlier, you talked about your stress  
8 related to this -- the last couple of days. Do you recall that  
9 testimony?

10 MS. CACACCIO: Your Honor, can I be heard on that, just  
11 before we move on?

12 JUDGE ROSAS: All right. Hold on. Hold on.

13 MS. CACACCIO: If we want to look to excuse the witness,  
14 or something. It may -- it may not be necessary. But it's  
15 better safe than sorry.

16 JUDGE ROSAS: You can step out.

17 What are we doing?

18 MS. CACACCIO: General Counsel at this time is not going  
19 to submit that evidence for consequential damage purposes.  
20 Though, the -- to the extent that Mr. Hayes entered it for --  
21 for purpose, that's fine. But I know we had talked about that  
22 earlier on the record. It doesn't mean that the question can't  
23 be asked. I just want to make clear that it's not the  
24 consequential damage purposes.

25 JUDGE ROSAS: But --

1 MS. POLITO: If you're willing to strike that --

2 JUDGE ROSAS: But --

3 MS. POLITO: -- her prior testimony relating to her  
4 health, I'm fine. I won't ask the question. But otherwise, I  
5 think she's opened the door.

6 MR. HAYES: Your Honor, again, I mean, I think, we went  
7 over this. The testimony was offered for a very specific  
8 reason. I -- there's no reason to strike.

9 JUDGE ROSAS: Well, coun -- Respondent is entitled to  
10 address it for that reason. So let's bring her back.

11 MR. HAYES: I'd --

12 JUDGE ROSAS: What?

13 MR. HAYES: Sorry. I'm sorry. I don't think anybody  
14 actually objected.

15 JUDGE ROSAS: Right.

16 MS. CACACCIO: No. I just wanted to make clear that --  
17 you had asked me to tell you whether we intended to use that  
18 consequential damage purposes. And so I was telling you we  
19 were not doing that.

20 JUDGE ROSAS: Well --

21 MS. CACACCIO: And so to the extent that we're going to --

22 JUDGE ROSAS: I expected you all to discuss whether or not  
23 to have the testimony withdrawn or stricken.

24 MS. CACACCIO: Oh.

25 JUDGE ROSAS: Yes.

1 MS. CACACCIO: I did not understand what you were asking  
2 of me.

3 MR. HAYES: I think we can do that quickly.

4 MS. CACACCIO: Do you want to do that now?

5 MR. HAYES: Do you want us to do that now, Your Honor?

6 JUDGE ROSAS: Sure.

7 MR. HAYES: Okay.

8 MS. CACACCIO: My misunderstanding, Judge. Are we still  
9 on the record?

10 JUDGE ROSAS: Let's go off.

11 MR. HAYES: I think we just need a minute.

12 MS. CACACCIO: Yeah. Just take one minute.

13 (Off the record at 4:20 p.m.)

14 MS. CACACCIO: Go ahead.

15 MR. HAYES: Okay. Your Honor, so we had a brief  
16 discussion with the General Counsel. The Union is not, you  
17 know, withdrawing that testimony. We're asking it to be  
18 stricken. Again, it was offered for the very limited purpose  
19 of discussing evidence issues. And my understanding is, the  
20 General Counsel doesn't have an objection to the testimony for  
21 that purpose alone.

22 JUDGE ROSAS: But you -- but you're not moving -- you're  
23 not agreeing to strike the testimony? It stands for the  
24 proposition that -- as to the affect that listening to all  
25 these audiotapes is having on these witnesses?

1 MR. HAYES: Exactly, Your Honor.

2 JUDGE ROSAS: Okay. And what's the relevant of that --  
3 relevance of that?

4 MR. HAYES: It's relevant to the, I guess, procedural  
5 questions that are still open about how the parties are going  
6 to handle recordings for future witnesses in this area.

7 JUDGE ROSAS: Well, we'll discuss that a little more. But  
8 okay. All right. So you understand the purpose for which it  
9 was offered, right?

10 MS. POLITO: Well, my understanding from the notes that we  
11 took, is that the Union's allegation is that playing of every  
12 recording causes trauma to witnesses. And then, he submitted  
13 medical evidence relating to this particular witness, relating  
14 to her heart and her Apple Watch, putting her medical evidence  
15 into testimony. We talked for three days now about the  
16 recordings. We have tried to come up with every possible  
17 solution, either all people in this room have the most  
18 difficulty listening to the audio recordings. But there is no  
19 other way as a company, other than for us to be able to listen  
20 to the recordings that they are trying to enter into evidence  
21 and have the witness identify the speakers. We've -- counsel  
22 for the General Counsel has actually gotten a pretty good  
23 routine now. It's been going smoothly. We work together.  
24 This testimony is completely irrelevant.

25 JUDGE ROSAS: Right.



1 MS. POLITO: I don't particularly want to -- I don't know  
2 if we're on the record or not, I don't particularly answer that  
3 or not. Because she --

4 JUDGE ROSAS: Are we on the record?

5 MS. POLITO: They put it in the record.

6 JUDGE ROSAS: Are we back on the record? Yeah, we are.  
7 We are.

8 MS. POLITO: Oh.

9 JUDGE ROSAS: So you -- you have a couple of questions on  
10 this?

11 MS. POLITO: Yeah. I'm going to ask her about her health  
12 and her heart rate and her doctor and who she -- she saw anyone  
13 about it.

14 JUDGE ROSAS: Okay.

15 MS. CACACCIO: Yeah. You want me to get her?

16 JUDGE ROSAS: Do you want to get some steps?

17 MS. CACACCIO: I would. Thank you.

18 JUDGE ROSAS: All right.

19 All right. Go ahead.

20 **RESUMED CROSS-EXAMINATION**

21 Q BY MS. POLITO: Ms. Eisen, I apologize, because I -- I was  
22 calling you Ms. Eiser.

23 A That's right.

24 Q I have this thing, once I get the name wrong I have a hard  
25 time, as my colleagues know, adjusting. So I apologize.

1 A No worries.

2 Q So Ms. Eisen, earlier you gave testimony about being at  
3 these listening sessions and your heart rate rising as a result  
4 of those listening sessions; is that correct?

5 A That is correct. Yes.

6 Q Do you have a heart problem?

7 A I do not.

8 Q Have you sought medical treatment for it?

9 A I have not.

10 Q Have you sought therapist treatment for it?

11 A I have not.

12 Q Do you continue to wear your Apple Watch normally outside  
13 the Federal Court as part of your regular routine?

14 A Just about every day, yes.

15 Q And now, are there other times when your heart rate  
16 escalates?

17 MR. HAYES: Objection. Asked and answered.

18 JUDGE ROSAS: I'll allow it. You can answer.

19 A I have never received that warning again, since then.

20 Q BY MS. POLITO: And the warning you say that you received,  
21 was it via, like, text, or was it looking at the app on your  
22 phone?

23 A It -- it, like, vibrates and pops up as a little thing  
24 with your heart. And then, the information is downloaded to  
25 the health app on your phone.

1 Q It notifies you on your watch?

2 A Yes.

3 Q And so that's how you were aware of it?

4 A I was aware that something had happened. I didn't know  
5 until after I had got out the meeting and looked at the  
6 notification that that's what it was.

7 Q Okay. And we've talked about all of the listening  
8 sessions that you attended. We've also talked about all the  
9 listening sessions that you recorded?

10 A Yes.

11 Q Have you recorded any other meetings --

12 MS. CACACCIO: Object --

13 Q BY MS. POLITO: -- relating to your employment at  
14 Starbucks?

15 MS. CACACCIO: Objection. Asked and answered.

16 JUDGE ROSAS: No. Any other meetings? You can answer.

17 A I have not. No.

18 MS. POLITO: Judge, if I could just have a few minutes to  
19 confirm with my colleagues?

20 JUDGE ROSAS: Off the record.

21 (Off the record at 4:27 p.m.)

22 JUDGE ROSAS: Respondent?

23 MS. POLITO: Good afternoon, Your Honor. We have nothing  
24 further at this time. But as counsel noted earlier, we have  
25 served the witness through Mr. Hayes, the subpoena duces tecum,

1 and the testifying subpoena for a later date, should that be  
2 necessary.

3 JUDGE ROSAS: Redirect?

4 MS. CACACCIO: Your Honor, would you like me to respond to  
5 the -- just duces tecum issue, or just the redirect issue?

6 JUDGE ROSAS: You get to put in a response.

7 MS. CACACCIO: Okay.

8 JUDGE ROSAS: Right?

9 MS. CACACCIO: Yes, Your Honor.

10 JUDGE ROSAS: Okay.

11 MS. CACACCIO: I have no redirect for this witness, Your  
12 Honor, not at this time.

13 MR. HAYES: I -- I have maybe two questions, Your Honor.

14 JUDGE ROSAS: Charging Party?

15 **REDIRECT EXAMINATION**

16 Q BY MR. HAYES: Michelle, do you remember being asked by  
17 the Company's attorney about the Walden-Anderson store being  
18 closed down?

19 A I do. Yes.

20 Q And the Genesee and East Robinson stores now acting as  
21 training stores?

22 A I remember that question, yes.

23 Q Are --

24 MS. POLITO: I'm just going to object. I didn't ask about  
25 the Walden-Anderson store being closed down.

1 JUDGE ROSAS: Genesee and another store that wasn't  
2 Walden, that's correct.

3 MS. CACACCIO: Your Honor, the witness testified -- on  
4 cross-examination, the witness testified about the stores  
5 closing in the fall of 2021. And that's the best --

6 JUDGE ROSAS: But you're talking about the training  
7 stores?

8 MS. CACACCIO: And that's the Walden-Anderson store.

9 JUDGE ROSAS: Oh. Okay. Overruled.

10 MR. HAYES: Okay.

11 Q BY MR. HAYES: Michelle, first of all, the Genesee and  
12 East Robinson stores, are they still open to the public?

13 A They are, yes.

14 Q As far as you know?

15 A As far as I know.

16 Q Has the -- since the Walden-Anderson store was closed, and  
17 then reopened, has the company closed down any other store in  
18 the Buffalo area to be a training store?

19 A Not that I'm aware of, no.

20 MR. HAYES: Nothing further.

21 JUDGE ROSAS: Any follow up to that?

22 MS. CACACCIO: No, Your Honor.

23 JUDGE ROSAS: Thank you, ma'am. You're excused. Please  
24 do not discuss your testimony with anyone.

25 THE WITNESS: Okay.

1 JUDGE ROSAS: Other than, you know, obviously, consulting  
2 with counsel.

3 Is this witness going to remain your designated --

4 MR. HAYES: Yes, Your Honor.

5 JUDGE ROSAS: -- individual? Okay.

6 MS. CACACCIO: Your Honor, just for the record,  
7 Respondent's counsel did return to me the three Jencks material  
8 affidavits that I provided.

9 JUDGE ROSAS: Okay. All right.

10 So are you ready with your next witness?

11 MS. CACACCIO: Not at this time, Your Honor. It's 4:40.

12 Our witness -- our --

13 MS. STANLEY: It will take him 20 minutes to get here.

14 JUDGE ROSAS: Off the record.

15 (Off the record at 4:39 p.m.)

16 JUDGE ROSAS: All right. So let's go back on the record.  
17 And we'll adjourn at this point until tomorrow at 9 a.m. with  
18 everybody then. Off the record.

19 **(Whereupon, the hearing in the above-entitled matter was**  
20 **recessed at 4:44 p.m. until Thursday, July 14, 2022 at 9:00**  
21 **a.m.)**

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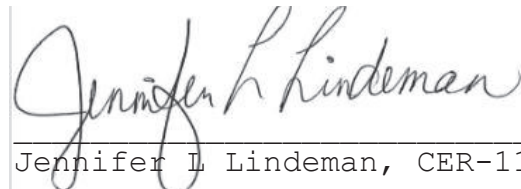
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C E R T I F I C A T I O N

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 3, Case Number 03-CA-285671, et al., Starbucks Corporation and Workers United, held at the National Labor Relations Board, Region 3, Robert H. Jackson United States Courthouse, Wyoming (5E) Courtroom, 2 Niagara Square, Buffalo, New York 14202, on July 13, 2022, at 9:03 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



Jennifer L Lindeman, CER-1188

Official Reporter